



Cedar City

10 North Main Street • Cedar City, UT 84720
435-586-2950 • FAX 435-586-4362
www.cedarcity.org

Mayor
Maile L. Willson

Council Members
Ronald R. Adams
Paul Cozzens
Terri W. Hartley
Craig E. Isom
Fred C Rowley

City Manager
Rick Holman

CITY COUNCIL WORK MEETING

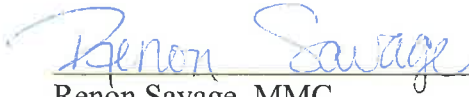
JULY 6, 2016

5:30 P.M.

The City Council meeting will be held in the Council Chambers at the City Office, 10 North Main Street, Cedar City, Utah. The agenda will consist of the following items:

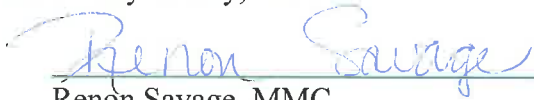
- I. Call to Order
- II. Agenda Order Approval
- III. Administration Agenda
 - Mayor and Council Business
 - Swear in Darin Adams as Police Chief
 - Staff Comment
- IV. Public Agenda
 - Public Comments
- V. Business Agenda
 - Public
 1. Consider a resolution amending the City's general land use plan from medium density residential to mixed use on property located between 300 West and 1100 West and 400 North and Industrial Road. Paul Bittmenn
 2. Public hearing to consider an ordinance changing the zone from General Commercial (GC) to Mixed Use Development (MU) on approximately .58 acres of land located in the vicinity of 475 North 400 West. Watson Engineering/Paul Bittmenn
 3. Consider the vicinity plan for The Pointe Subdivision Phases 1 thru 3. Equestrian Point LLC/Kit Wareham
 4. Consider the vicinity plan for Fort Cedar Commerce P.U.D. Phase 2. Tom Jett/Kit Wareham
 5. Consider Emergency Water Shed Protection (EWP) Agreement with the U.S. Natural Resources Conservation Service (NRCS) for funding on the Coal Creek Flood Control Project, Phase 3. Lance Smith, NRCS/Kit Wareham
 - Staff
 6. Consider contract for IT Services. Randall McUne
 7. Consider purchase of excavator for Storm Drain. Jeff Hunter
 8. Consider disposal of surplus property. Jeff Hunter/Chief Phillips
 9. Consider an agreement with UDOT for joint participation in the repairs of miscellaneous curb, gutters, and sidewalks on UDOT roads throughout Cedar City. Kit Wareham

Dated this 5th day of July, 2016.


Renon Savage, MMC
City Recorder

CERTIFICATE OF DELIVERY:

The undersigned duly appointed and acting recorder for the municipality of Cedar City, Utah, hereby certifies that a copy of the foregoing Notice of Agenda was delivered to the Daily News, and each member of the governing body this 5th day of July, 2016.


Renon Savage, MMC
City Recorder

Cedar City Corporation does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

If you are planning to attend this public meeting and, due to a disability, need assistance in accessing, understanding or participating in the meeting, please notify the City not later than the day before the meeting and we will try to provide whatever assistance may be required.

CEDAR CITY COUNCIL
AGENDA ITEMS - 1
DECISION PAPER

TO: Mayor and City Council

FROM: City Attorney

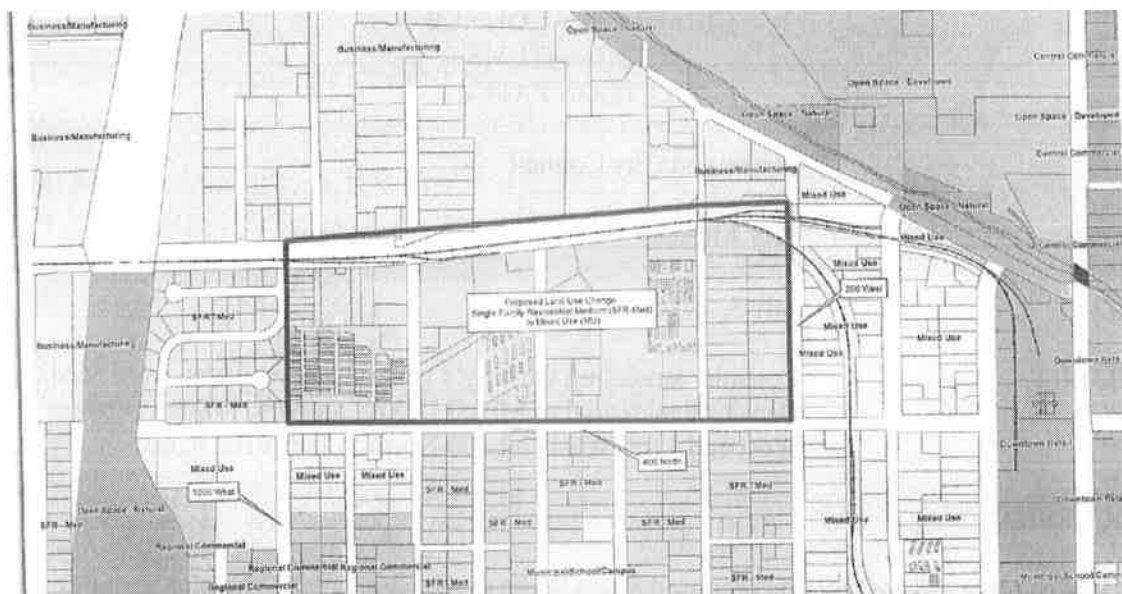
DATE: July 5, 2016

SUBJECT: Consider amending the City's general land use plan from Medium Density Residential to Mixed Use on property located between 300 West and 1100 West and 400 North to Industrial Road.

DISCUSSION:

The area of town covered by this proposed amendment to the general land use plan contains many commercial as well as residential uses. The City has received many requests to change the general land use designation and/or the zoning in this area. Rather than look at the general land use plan on lot by lot basis the staff proposal is to look at this wider area and propose that the general land use plan be amended to Mixed Use. This amendment would better reflect the types of uses currently in the area as well as facilitate the types of requests the City has been receiving.

Attached is a map showing the area, the planning commission minutes, and a proposed resolution. The legal description and approximate acreage involved will be included in the final resolution for your work meeting. Please consider the proposed amendment to the general land use plan.



CEDAR CITY PLANNING COMMISSION

MINUTES

June 7, 2016

The Cedar City Planning Commission will hold a Meeting on Tuesday, June 7, 2016 at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: Rich Gillette-Chair, Craig Isom, Jennie Hendricks, Hunter Shaheen

Members absent: Mary Pearson -Excused, Russ Olsen, Jill Peterson

Staff in attendance: Kit Warcham, Drew Jackson, Paul Bittmenn, and Michal Adams

Others in attendance: Tim Watson

The meeting was called to order at 5:15 P.M.

ITEM/
REQUESTED MOTION

LOCATION/PROJECT

APPLICANT/
PRESENTER

I. Regular Items

- 1- Approval of Minutes May 17, 2016
(Approval)

Craig moved to approve the minutes of May 17, 2016, seconded by Jennie and the vote was unanimous.

- | | | | |
|----|---|---|------------|
| 2- | General Land Use Change
From Medium Density Res. To
Mixed Use(Recommendation) | 400 N to Ind. Rd
between 300 W &
1000 W | City Staff |
|----|---|---|------------|

Kit said that there have been a few pieces of land changing in this area so he thought they should change the entire area on the General Land Use map all at once. He brought up the aerial map and pointed out this area. There are businesses, trailer parks, churches, apartments and other things. He thinks it makes more sense to make this entire area all mixed use on the General Land Use map. That might show that the City is planning a little bit better. That way they would not need to piece meal this area one parcel at a time. This will take in the next agenda item.

Jennie moved to give the City Council a positive recommendation on this land use change. Seconded by Hunter and the vote was unanimous.

- | | | | |
|----|--|-------------|--------------------------|
| 3- | Zone Change GC to MU
(Recommendation) | 457 N 400 W | Shem Mackert/Watson Eng. |
|----|--|-------------|--------------------------|

Tim Watson said he was representing Shem Mackert on this property. They would like to see this change from GC to MU. It falls in the area that was just discussed. He said that several months ago they made a similar change in the block to the east of this one. This parcel is about .58 acres to be rezoned. Everything in this block is currently more like a mixed use zone. Kit said this would have to go through after the previous item. The approval on this zone change would need to be subject to that general land use change also going through.

Jennie made a motion to give a positive recommendation to the City Council on this zone change subject to the General Land Use change also being approved. Craig seconded the motion and the vote was unanimous.

The meeting adjourned at 5:23 p.m.

Michal Adams, Administrative Assistant

PUBLIC HEARING

- 5- **General Land Use Change** 400 N to Ind. Rd City Staff
 From Medium Density Res. To between 300 W &
 Mixed Use 1000 W
 (Recommendation)

Rich opened the public hearing.

Kit said they have seen different pieces within this area coming through to change the general and use. He would like to just propose that they change the entire area of just the land use as most of this area is already mixed use. The Planning Commission has already given positive recommendation and voted for the changes to this area. The State Statute requires them to do this as a public hearing which was not done at the last meeting when it was voted on.

Rich closed the public hearing.

As this was voted upon before, there was no need to vote on this item again.

- 6- **Street Name Change** Along College Ave from City Staff
 To Shakespeare Lane 100 West To 300 West
 (Recommendation)

Ryan Robinson who is an intern for Rick talked about how the Festival would like to see the name changed to Shakespeare Lane from 100 – 300 West along College Ave. They sent letters to all who would be affected and have not heard back from anyone. There are only a couple of houses that actually front College Ave. in this two block section.

Craig thought this was a wonderful idea.

Craig moved to give the City Council a positive recommendation on this street name change, seconded by Mary and the vote was unanimous.

Staff Items

- 1- **Residential Development Overlays (RDO) Training** Kit W

Kit said as they have an RDO coming through the process and the Planning Commission will see that in a few weeks he wanted to give them a heads up on just what an RDO was. The history of residential development overlays is that it has been in place about 4 years. Having a development with mixed uses is now very popular. The RDO process replaced another process that was called the Master Planned Development (MPD). That type of development was rescinded 4 years ago when the other was put in place. Any that are still out there are grandfathered in and they can still do those but no more will be allowed. It is a very cumbersome process. They could come up with their own zoning, standards and all this was put into an agreement. It was a very long process taking many meetings with staff and then getting that agreement in place.

None of those MPD agreement areas never really developed. That is probably a good thing as some of the things they agreed to were a bit scary. They have since come up with the RDO and this is how it works (see attachment); you have a section of land and it is annexed. You want to develop

CEDAR CITY RESOLUTION NO. _____
A RESOLUTION OF THE CEDAR CITY COUNCIL AMENDING THE CEDAR CITY GENERAL LAND USE
PLAN; CHANGING THE DESIGNATION ON APPROXIMATELY _____ ACRES OF PROPERTY FROM
MEDIUM DENSITY RESIDENTIAL TO MIXED USE DEVELOPMENT ON PROPERTY LOCATED
BETWEEN 300 WEST AND 1000 WEST AND 400 NORTH TO INDUSTRIAL ROAD.

WHEREAS, Cedar City has adopted a general land use plan in accordance with the Utah Municipal Land Use Development and Management Act, UCA §10-9a-101 et. sec.; and

WHEREAS, The City has surveyed the area of land described herein and found that there are many commercial uses in existence as well as many residential uses. Also, recently the City has received various requests within this area to amend the City's general land use plan to allow for mixed uses; and

WHEREAS, Cedar City's General Land Use Plan currently designates the herein described property as Medium Density Residential; and

WHEREAS, the entire property that is subject to this amendment to the Cedar City General Land Use Plan is more particularly described as:

[insert legal description]

WHEREAS, pursuant to UCA §10-9a-404 the Cedar City Planning Commission duly posted and held a public hearing regarding the requested general land use plan amendment, said public hearing was held on June 21, 2016; and

WHEREAS, the planning commission has given a positive recommendation to the City Council to change the general land use designation from Medium Density Residential to Mixed Use Development; and

WHEREAS, the Cedar City Council finds that the proposed change in land use designation is consistent with the Cedar City General Land Use Plan.

NOW THEREFORE, be it resolved by the City Council of Cedar City, State of Utah, that the land use designation for the property described herein is hereby amended from Medium Density Residential to Mixed Use Development.

This resolution, Cedar City Resolution No. 16-0210, shall take effect immediately upon passage.

AYES - _____ NAYS - _____ ABSTAINED - _____

Dated this _____ day of July, 2016.

MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
CITY RECORDER

CEDAR CITY COUNCIL
AGENDA ITEMS - 2
DECISION PAPER

TO: Mayor and City Council

FROM: City Attorney

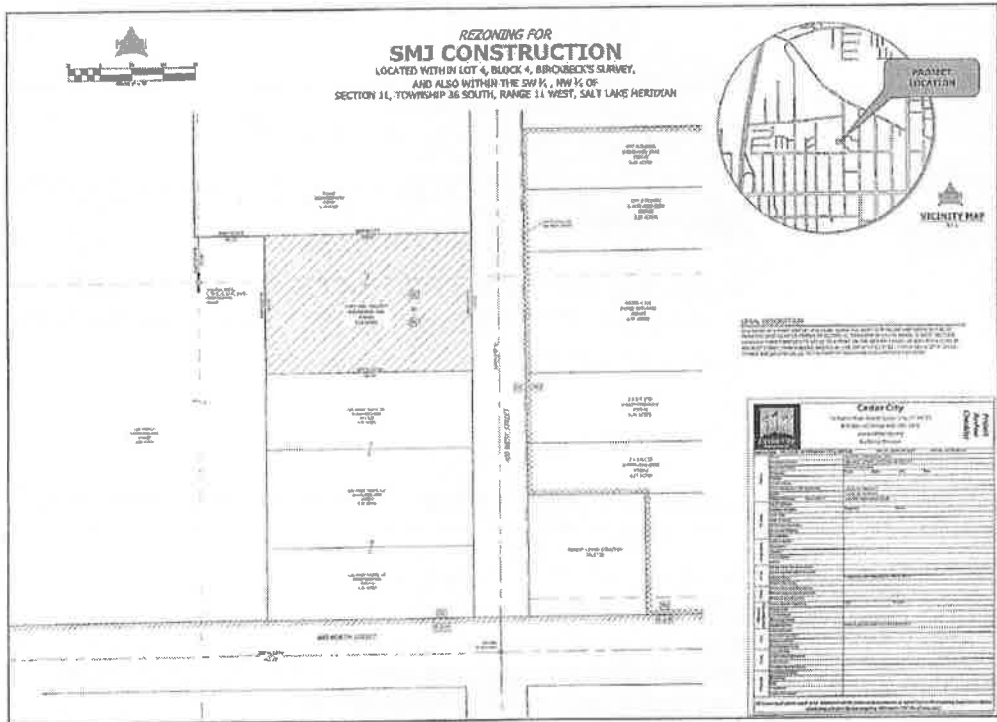
DATE: July 5, 2016

SUBJECT: Public Hearing to consider a zone change from General Commercial (GC) to Mixed Use (MU) on property located at 475 North and 400 West

DISCUSSION:

The proposed zone change is related to the item on tonight's agenda recommending a change in the general land use plan. If the proposed change to the City's general land use plan is adopted this zone change would further the general land use plan.

The proposed zone change was positively recommended by the Cedar City Planning Commission, a copy of their minutes are attached. The proposed zone change has been advertised for a public hearing. The attached ordinance contains the findings the council would adopt should they choose to approve of the proposed zone change. Please receive the public comments, if any, and consider the proposed zone change.



WATSON

WATSON ENGINEERING COMPANY, INC.
407 SOUTH 21ST WEST, SUITE 7
CEDAR CITY, UTAH 84202
TEL: 725-1000 FAX: 725-1001

SMJ CONSTRUCTION
3800 BAKERS
UTAH 84001
TEL: 725-1000 FAX: 725-1001

1 of 1

CEDAR CITY PLANNING COMMISSION

MINUTES

June 7, 2016

The Cedar City Planning Commission will hold a Meeting on Tuesday, June 7, 2016 at 5:15 p.m., in the Cedar City Council Chambers, 10 North Main, Cedar City, Utah.

Members in attendance: Rich Gillette-Chair, Craig Isom, Jennie Hendricks, Hunter Shaheen

Members absent: Mary Pearson -Excused, Russ Olsen, Jill Peterson

Staff in attendance: Kit Wareham, Drew Jackson, Paul Bittmenn, and Michal Adams

Others in attendance: Tim Watson

The meeting was called to order at 5:15 P.M.

<u>ITEM/ REQUESTED MOTION</u>	<u>LOCATION/PROJECT</u>	<u>APPLICANT/ PRESENTER</u>
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I. Regular Items

- 1- **Approval of Minutes May 17, 2016**
(Approval)

Craig moved to approve the minutes of May 17, 2016, seconded by Jennie and the vote was unanimous.

- | | | |
|------------------------------------|------------------|------------|
| 2- General Land Use Change | 400 N to Ind. Rd | City Staff |
| From Medium Density Res. To | between 300 W & | |
| Mixed Use(Recommendation) | 1000 W | |

Kit said that there have been a few pieces of land changing in this area so he thought they should change the entire area on the General Land Use map all at once. He brought up the aerial map and pointed out this area. There are businesses, trailer parks, churches, apartments and other things. He thinks it makes more sense to make this entire area all mixed use on the General Land Use map. That might show that the City is planning a little bit better. That way they would not need to piece meal this area one parcel at a time. This will take in the next agenda item.

Jennie moved to give the City Council a positive recommendation on this land use change. Seconded by Hunter and the vote was unanimous.

- | | | |
|--------------------------------|-------------|--------------------------|
| 3- Zone Change GC to MU | 457 N 400 W | Shem Mackert/Watson Eng. |
| (Recommendation) | | |

Tim Watson said he was representing Shem Mackert on this property. They would like to see this change from GC to MU. It falls in the area that was just discussed. He said that several months ago they made a similar change in the block to the east of this one. This parcel is about .58 acres to be rezoned. Everything in this block is currently more like a mixed use zone. Kit said this would have to go through after the previous item. The approval on this zone change would need to be subject to that general land use change also going through.

Jennie made a motion to give a positive recommendation to the City Council on this zone change subject to the General Land Use change also being approved. Craig seconded the motion and the vote was unanimous.

The meeting adjourned at 5:23 p.m.

Michal Adams, Administrative Assistant

CEDAR CITY ORDINANCE NO. _____
AN ORDINANCE OF THE CEDAR CITY COUNCIL AMENDING CEDAR CITY'S ZONING DESIGNATION
FROM GENERAL COMMERCIAL (GC) TO MIXED USE (MU) ON APPROXIMATELY 0.58 ACRES OF
LAND LOCATED IN THE VICINTIY OF 475 NORTH AND 400 WEST.

WHEREAS, the owners of property located in the vicinity of 475 North and 400 West have petitioned Cedar City to change current zoning designation from General Commercial (GC) to Mixed Use (MU) on approximately 0.58 acres of property, the property is more particularly described as follows:

SMJ CONSTRUCTION, SHEM MACKERT – 475 N. 400 W. – ZONE CHANGE FROM GC TO MU
BEGINNING AT A POINT N00°18'14"W 43.06' ALONG THE WEST SECTION LINE AND N89°41'46"E
62.20' FROM THE WEST QUARTER CORNER OF SECTION 11, TOWNSHIP 36 SOUTH, RANGE 11 WEST,
SALT LAKE MERIDIAN; THENCE N89°41'27"E 193.51' TO A POINT ON THE WESTERLY
RIGHT-OF-WAY (R.O.W.) LINE OF 400 WEST STREET; THENCE ALONG SAID R.O.W. LINE S00°19'07"E
131.12'; THENCE S89°41'27"W 193.55'; THENCE N00°18'14"W 131.12' TO THE POINT OF BEGINNING
AND CONTAINS 0.58 ACRES.

WHEREAS, after providing public notice as required by City ordinance the Cedar City Planning Commission considered the proposed zoning amendments for the above described property and found that the amendments are reasonably necessary, in the best interest of the public, and in harmony with the objectives and purposes of Cedar City's zoning ordinance. The Planning Commission has given the proposed zone changes a positive recommendation; and

WHEREAS, the City Council after duly publishing and holding a public hearing to consider the proposed zoning amendments finds the proposed amendments further the City's policy of establishing and maintaining sound, stable, and desirable development within the City, and promoting more fully the objectives and purposes of the City's zoning ordinance or correction of manifest errors.

NOW THEREFORE BE IT ORDAINED by the City Council of Cedar City, State of Utah, that the City's zoning designation on the herein described property be amended from General Commercial (GC) to Mixed Use (MU), and that City staff is hereby directed to make the necessary changes to the City's zoning map.

Remainder of page intentionally left blank.

This ordinance, Cedar City Ordinance No. _____, shall become effective immediately upon passage by the City Council and published in accordance with State Law.
Dated this ____ day of July, 2016.

MAILE L. WILSON
MAYOR

[SEAL]
ATTEST:

RENON SAVAGE
RECORDER

**CEDAR CITY
COUNCIL AGENDA ITEM 3
STAFF INFORMATION SHEET**

TO: Mayor and Council

FROM: Kit Wareham

DATE: July 6, 2016

SUBJECT: Consider Vicinity Plan for **The Pointe Subdivision Phases 1 thru 3**

Discussion: The subject subdivision vicinity plan has been recommended for approval by the Cedar City Planning Commission. A copy of the Planning Commission's minutes is attached. Also attached is a copy of the subdivision's vicinity plan. As required in the City's subdivision ordinance once the Planning Commission recommends a subdivision vicinity plan for approval, the plan shall then be presented to City Council for your review and approval, or approval subject to alterations, or disapproval. The following is some general information concerning the subject subdivision:

Developer-	Equestrian Point LLC
Subd. General Location-	2050 South Main Street (West of Eagle Ridge at South Mountain)
Area Land Use Zone-	Low Density Residential
Number of Lots-	Phase 1-9 lots, Phase 2- 10 lots, Phase 3- 16 lots
Lot Size Range-	10,000 to 13,000 square feet, R-1 Lots
Misc. Information-	This vicinity plan is located in an area that is master planned for low density R-1 type lots and is current zoned R-1. The lots were mostly improved as part of the Equestrian Point Subdivision, but were never platted.

**3- Subd.- Vicinity 1300 N 3700 W Equestrian Pt. LLC/InSite
(Recommendation) The Pointe Subd. Phases 1-3**

Ron Larsen said this property was to be the very last phase of Equestrian Pointe but that plat was never recorded. Most all of the improvements are already in. There are only a few things needed to finish this up; some paving, etc. Because it has been such a long time they needed to start over with the approval process. This portion was sold to new owners. The new owners wanted to change the name and call this section The Pointe Subdivision and do it in 3 phases. Ron pointed out the separate phases. This is all in the R-1 zone and all the lots are compliant.

Rich asked if the City had checked everything and all the waterlines, etc. were in good shape. Kit said that the City will need to check each phase as it is completed and test all lines again.

Kit wanted to point out that as the subdivision ordinance has been revised, anyone who does improvements now without the plat being recorded has to pay a penalty fee. As this was all done prior to the changes in the ordinance, that new rule will not apply to this.

Jill made a motion to give the City Council a positive recommendation for the Pointe Subdivision vicinity plan. Seconded by Craig and the vote was unanimous.

PUBLIC HEARING

**4- PUD 1450 W Industrial Rd. Tom Jett/ GO Civil
(Recommendation) Fort Cedar Commerce PUD Phase 2**

Rich opened the public hearing.

Heath pointed out the property near the old Coke plant. There are two existing buildings in phase 1. This phase 2 will be property that has not yet developed. This phase 2 is to the north and as it is a PUD can all be sold separately. It is zoned industrial so they will have smaller lots for anything you can put in industrial. The plan is to have a gate between phase 1 and 2 so they can keep things secure. He talked about the road that will parallel I-15 on the east side of this property and there is a City master planned road along the north of this property. When they develop to the phases that front these future roads, the roads would need to be improved. That would be the final two phases. The lots are all 10,000 square feet or larger. He pointed out the sewer on the north they will tie into, the water will come off Industrial Road and tie into this phase. All the roads will be asphalt and they will place a fence around the perimeter as this is a PUD. There will be fire hydrants, etc.

Jill said they have seen this before. Heath said they did bring this once before with all of the property being developed. They now are splitting this into separate phases. Tom Jett said he has 2 projects here and 2 different engineers working on them. Jay Adams is doing an amendment to Phase 1 for him and he pointed out what that would be.

Rich closed the public hearing.

Jill moved to give a positive recommendation to City Council for this Fort Cedar PUD phase 2, seconded by Mary and the vote was unanimous.

**CEDAR CITY
COUNCIL AGENDA ITEM 4
STAFF INFORMATION SHEET**

TO: Mayor and Council

FROM: Kit Wareham

DATE: July 6, 2016

SUBJECT: Vicinity Plan for the Fort Cedar Commerce P.U.D. Phase 2

Discussion: The subject PUD vicinity plan has been recommended for approval by the Cedar City Planning Commission. A copy of the Planning Commission's minutes is attached. Also attached are a copy of the PUD's Vicinity Plan and Project Analysis. As required in the City's subdivision ordinance once the Planning Commission recommends a PUD vicinity plan for approval, the plan shall then be presented to City Council for your review and approval, or approval subject to alterations, or disapproval. The following is some general information concerning the subject PUD:

Developer- **Tom Jett**

P.U.D. General Location- **1450 West Industrial Road (West of old Coke plant)**

Area Land Use Zone- **Business and Light Manufacturing**

Number of Lots- **11**

Lot Size Range- **9,000 to 16,000 Square Foot Commercial**

Misc. Information-

LOCATED IN NW 1/4 SECTION 10, T36S, R11W, S1M CEDAR CITY, IRON COUNTY, UTAH

VICINITY MAP
NOT TO SCALE

PROPERTY DESCRIPTION

BEGINNING AT THE CENTER OF SECTION 14, T20S, R10E,
HARRIS; THENCE S 89°13'31" W, 1529.78 FEET ALONG THE
QUARTER SECTION LINE; THENCE S 89°00'00" W, 254.28 FEET TO
THE TRUE POINT OF BEGINNING; THENCE S89°37'00" W, 41.28 FEET
TO THE S 89°00'00" E CORNER OF FORT CASSAR CONFORMANCE CENTER;
THENCE S89°37'00" W, 21.72 FEET; THENCE S00°00'00" W, 17.57
FEET; THENCE S89°37'00" W, 150.47 FEET; THENCE N00°13'17" W,
31.37 FEET; THENCE S89°37'00" W, 181.28 FEET; THENCE
N00°13'17" W, 238.25 FEET; THENCE S89°37'00" W, 482 FEET;
THENCE N00°13'17" W, 567.90 FEET; THENCE S89°37'00" W, 634.23
FEET; THENCE S89°37'00" W, 370.84 FEET TO THE POINT OF
BEGINNING.

NOTES

1. SUBDIVISION IS ZONED RM
2. SUBMITTER WANTS PRESSURE FOR THIS LOCATION. -- PER (14767).
3. OWNER CANNOT OF APPROXIMATELY 1/2 TO 3 FEET OF BAY AREA SLAY DURING THE LINES OF GROUND TO BEACH-TO-TO ON OCEAN SLAY CLAY, BUT BAY, OR SANDY COME. (PAGES TO BE SUBMITTED TO THE CITY ENGINEER FOR REVIEW.)
4. ALL PRIVATE EASES ARE SUBJECT TO DISPOSITION IN PUBLIC UTILITY EASEMENTS.
5. BUILDING EASEMENTS MAY VARY FROM UNLIMITED ZONE. PER SUBDIVISIONS COORDINATING COMMITTEE.
6. BARS OF BEARING BOWLING "STILES" (BEING IN THE S.W. CORNER AND THE N.E. CORNER OF SECTION 36 1236, 1814, 2144)
7. TO BATTERY PUMP REQUIREMENTS, 35% OF TOTAL SUBDIVISION AREA MUST BE PLAY AREA. (THESE ARE THE REQUIREMENTS OF THE CITY ENGINEER TO LANDSCAPE 1/2 OF THE PROPERTY. VARIOUS AREAS OF THE PROPERTY ARE BEING LANDSCAPED.)
8. UTILITY EASEMENT RESPONSES
THE CITY, OWNER OF THE PROPERTY IN FRONT AND DISFORMED THE CITY PLAY AREA. THE CITY ENGINEER HAS REVIEWED THE UTILITY EASEMENTS, THE EASEMENTS AND EASEMENTS. A. THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, AND APPROVED, AND THROUGH THESE AREAS (BEING ON THIS PLAY AREA) THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, "LIMITED COMMON AREAS", ON UTILITY EASEMENTS FOR THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, TOGETHER WITH THE BIRTH OF AGREEMENTS FROM THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, ALONG WITH WHICH WOULD BECOME WITH NORMAL UTILITY. ANY CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, BEING OFFERED AT THE HISTORIC ON OBJECTS OF ANY PUBLIC UTILITY. THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS, BEING OFFERED BY THE OWNER OF THE CITY ENGINEER HAS REVIEWED THE EASEMENTS AND EASEMENTS.
9. THE SUBDIVISION DESIGN MEETS ALL APPLICABLE CODES AND

FLOOD ZONE

THIS SUBDIVISION FALLS WITHIN FEMA FLOOD ZONE II AS SHOWN ON FEMA MAP #46074-0002B, DATED MARCH 25, 2001.

FLOOD ZONE B: AREAS BETWEEN LIMITS OF THE 100-YEAR FLOOD AND 500-YEAR FLOOD; OR CERTAIN AREAS SUBJECT TO 100-YEAR FLOODING WITH AVERAGE DEPTHS LESS THAN ONE FOOT OR WHERE THE CONTRIBUTING DRAINAGE AREA IS LESS THAN ONE SQUARE MILE; OR AREAS PROTECTED BY LEVEES FROM THE BASIN FLOOD. (1)

SOILS CONDITION

THIS DOCUMENT IS THE MINIMALLY SUFFICIENT SET.

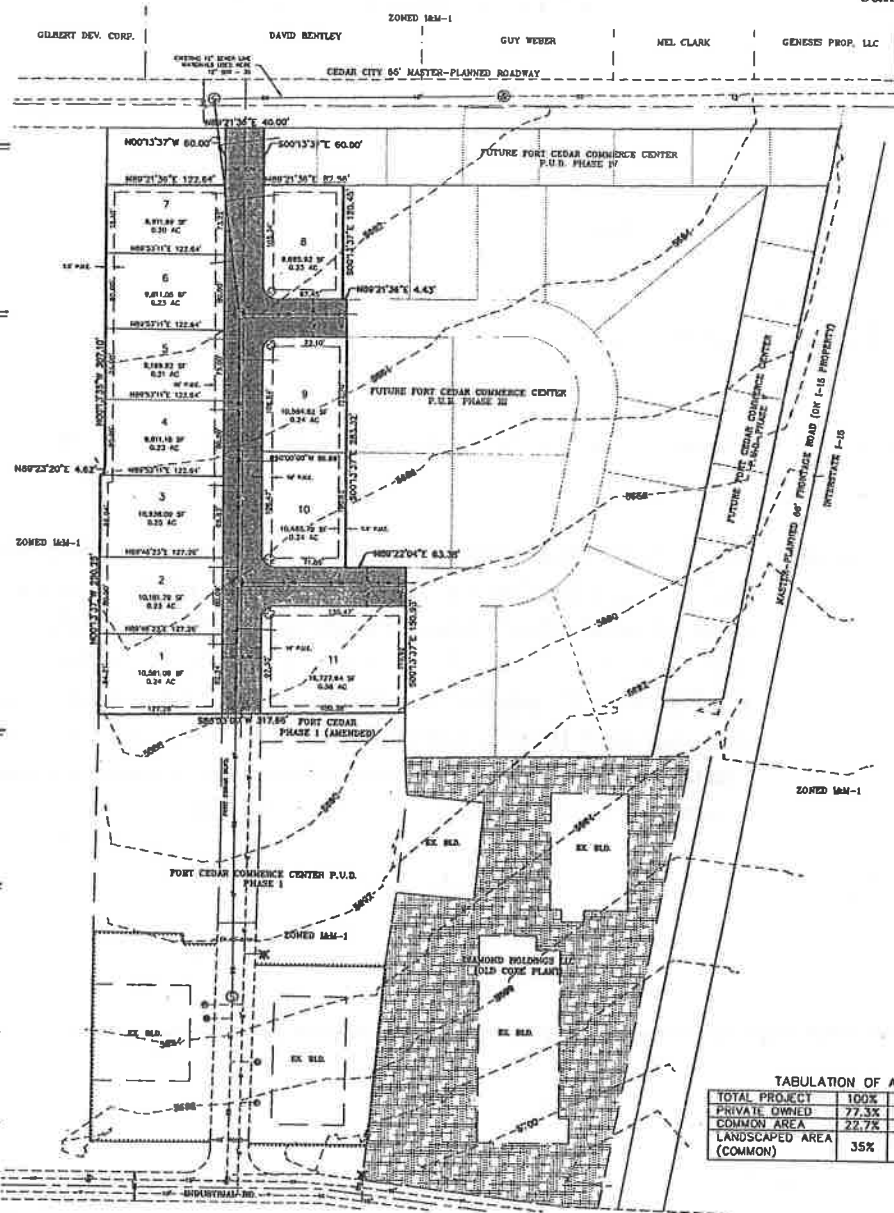
MINIMALLY SUSPECT SOILS. (SOME POSSIBILITY OF CONTAMINATION)
HYDROCOMPACTIBLE SOILS IN THIS ZONE ARE LIKELY TO BE TINE
AND DIALLO.
TESTING DESIRABLE BEFORE PAVING OR DEVELOPING (AND
RECONSTRUCTION). 1 TEST HOLE PER 30 LOTS. 50 FEET MINIMUM
DEPTH INTO SOIL, OR AT LEAST 5 FEET INTO BEDROCK, TO ACHIEVE
UNDISTURBED SOILS FOR LABORATORY TESTING.

AIRPORT INFLUENCE

THIS SUBDIVISION FALLS WITHIN THE AIRPORT INFLUENCE ZONE (AIZ)

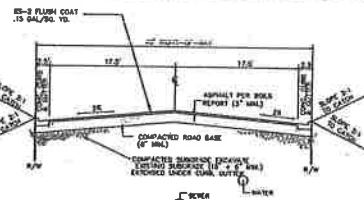
DEVELOPMENT OWNER

46 BMC BUILDERS: TOM JETT
PHONE: (438)-580-1985
MAIL ADDRESS: TOMALRIGHT@YAHOO.COM

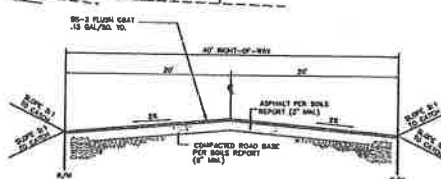


TABULATION OF AREA

TOTAL PROJECT	100%	151,464 S.F.
PRIVATE OWNED	77.3%	117,132 S.F.
COMMON AREA	22.7%	34,332 S.F.
LANDSCAPED AREA (COMMON)	35%	53,012 S.F.



EXISTING FORT CEDAR BLVD.
40' RIGHT-OF-WAY
N.T.S.



**TYPICAL ROAD SECTION
40' RIGHT-OF-WAY**
N.T.S.

LEGEND

- | SECTIONAL MARKER AS NOTED | EXISTING 4" PVC BENCH LATERAL | PROPOSED 4" PVC BENCH LATERAL |
|--------------------------------------|--|---|
| B/C STREET CENTERLINE MARK TO BE SET | - 0-0 - EXISTING PVC-COOB WATER MAIN (SIZE SHOWN)
EXISTING WATER METER
EXISTING GATE VALVE
EXISTING FRY HYDRANT | PROPOSED WATER MAIN (SIZE SHOWN)
PROPOSED WATER METER
PROPOSED GATE VALVE
PROPOSED FRY HYDRANT |
| "B/C" R/C TO BE SET | EXISTING 60"-36" BENCH MAIN (SIZE SHOWN)
EXISTING 4" BENCH MANHOLE | PROPOSED BENCH MAIN (SIZE SHOWN)
PROPOSED 4" BENCH MANHOLE |
| EXISTING ASPHALT | | |
| PROPOSED ASPHALT | | |
| EXISTING PAVED | | |

CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	23.67	18.00	90.41	145° 29' 01" W	21.28
C2	23.43	13.00	99.50	144° 52' 58" E	21.14
C3	23.46	13.00	99.60	144° 34' 15" E	21.14
C4	23.87	18.00	90.41	145° 25' 43" W	21.28

**VICINITY PLAN
FORT CEDAR COMMERCE CENTER P.U.D PH. 2
FOR
TOM JETT**

LOCATED IN SECTION 10, T20N, R11W, S14M CEDAR CITY, UTAH



GO CIVIL
ENGINEERING LLC
657 W. 200 N.
CEDAR CITY, UT 84720
844MI 483-4191
WWW.GO CIVIL.UT

REVISIONS		APPROVED	DATE
NO	DESCRIPTION		

INFORMATION CONTAINED ON THIS DRAWING IS THE SOLE PROPERTY OF THE COMPANY. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM THE COMPANY.

Fort Cedar Development PUD phase 2

June 2, 2016

Engineering

Cedar City 10 N. Main St.

Cedar City, UT 84720

Reference: Overall project analysis for Fort Cedar Development phase 2

To Whom it may concern:

Fort Cedar Development, LLC intends to develop the second of five phases of land located at approximately 1450 W. and Industrial Road in Cedar City. Phase 1, of the Fort Cedar development, is already completed and developed as a commercial and industrial PUD.

Phase 2 through 5, however, will have a different type of commercial purpose than Phase 1. The intended use for phase 2 will be light industrial, more suited for personal use. Possible usages for phase 2 would be personal work shops, gardens, and storage. Phase 2 will also be the fact in that it will be a gated commercial community. The intent behind the gate is to provide additional security for the lot owners and their property.

The streets will be paved, and each individual lot will have a city water meter. There will also be a privately owned sewer line that all the lots (phases 2 and 3) will be connected to. Furthermore, there will be natural gas and power to each lot as the individual phases are developed.

Individual lot prices are projected to start in the fifty-thousand dollar range. Our target audience will be individuals looking to have personal space away from their primary home for personal projects and uses.

Our intention is to break ground on the improvements in July 2016, and hopefully sell lots by the fall of 2016.

The setbacks will vary depending on whether they are corner lots or interior lots. However, all lots will meet minimum city standards and will be set back to a minimum of 20' off of property line to accommodate utility easements. The development will have an Owners' Association which will maintain the common areas of the industrial park. The Owners' Association fees will be determined by the majority of the individual lot owners as organized at a later date. However until that point, the developer will be responsible for all costs associated with the operations of the development. Thereafter, each property owner will be responsible to maintain and keep in good order and condition the repair and maintenance of the property and structures thereon. Let me know if you have any additional questions regarding this project.

Sincerely,

Eric Heaton , Project Manager

**3- Subd.- Vicinity 1300 N 3700 W Equestrian Pt. LLC/InSite
(Recommendation) The Pointe Subd. Phases 1-3**

Ron Larsen said this property was to be the very last phase of Equestrian Pointe but that plat was never recorded. Most all of the improvements are already in. There are only a few things needed to finish this up; some paving, etc. Because it has been such a long time they needed to start over with the approval process. This portion was sold to new owners. The new owners wanted to change the name and call this section The Pointe Subdivision and do it in 3 phases. Ron pointed out the separate phases. This is all in the R-1 zone and all the lots are compliant.

Rich asked if the City had checked everything and all the waterlines, etc. were in good shape. Kit said that the City will need to check each phase as it is completed and test all lines again.

Kit wanted to point out that as the subdivision ordinance has been revised, anyone who does improvements now without the plat being recorded has to pay a penalty fee. As this was all done prior to the changes in the ordinance, that new rule will not apply to this.

Jill made a motion to give the City Council a positive recommendation for the Pointe Subdivision vicinity plan. Seconded by Craig and the vote was unanimous.

PUBLIC HEARING

**4- PUD 1450 W Industrial Rd. Tom Jett/ GO Civil
(Recommendation) Fort Cedar Commerce PUD Phase 2**

Rich opened the public hearing.

Heath pointed out the property near the old Coke plant. There are two existing buildings in phase 1. This phase 2 will be property that has not yet developed. This phase 2 is to the north and as it is a PUD can all be sold separately. It is zoned industrial so they will have smaller lots for anything you can put in industrial. The plan is to have a gate between phase 1 and 2 so they can keep things secure. He talked about the road that will parallel I-15 on the east side of this property and there is a City master planned road along the north of this property. When they develop to the phases that front these future roads, the roads would need to be improved. That would be the final two phases. The lots are all 10,000 square feet or larger. He pointed out the sewer on the north they will tie into, the water will come off Industrial Road and tie into this phase. All the roads will be asphalt and they will place a fence around the perimeter as this is a PUD. There will be fire hydrants, etc.

Jill said they have seen this before. Heath said they did bring this once before with all of the property being developed. They now are splitting this into separate phases. Tom Jett said he has 2 projects here and 2 different engineers working on them. Jay Adams is doing an amendment to Phase 1 for him and he pointed out what that would be.

Rich closed the public hearing.

Jill moved to give a positive recommendation to City Council for this Fort Cedar PUD phase 2, seconded by Mary and the vote was unanimous.

**CEDAR CITY
COUNCIL AGENDA ITEM 5
STAFF INFORMATION SHEET**

TO: Mayor and Council

FROM: Kit Wareham

DATE: July 6, 2016

SUBJECT: Consider Agreement with Natural Resources Conservation Service (NRCS) For Funding to Construct Phase 3 of the Coal Creek Flood Control Project

As mentioned in previous meetings, Senator Hatch was able to get the subject Phase 3 of the Coal Creek Flood Control Project Federally funded as an Emergency Watershed Protection Project through the Division of Natural Resources (NRCS). This project will complete the Coal Creek Flood Control Project that will eliminate the FEMA Zone A Flood Zones along the Coal Creek Channel. The federal funding received for the project is \$2,062,582. The City's portion of the project will be \$625,025. All of the City's portion of the project will be in-kind donations mainly consisting of providing rock rip-rap and engineering service during construction. We are anticipating that the project will be constructed this late fall and winter.

In order to receive the Federal Funding for the project the City is required to enter into the attached agreement.

NOTICE OF GRANT AND AGREEMENT AWARD

1. Award Identifying Number 68-8D43-16-214		2. Amendment No.	3. Award/Project Period Date of NRCS signature - 1/13/2017	4. Type of Award Instrument Cooperative Agreement																									
5. Agency: Natural Resources Conservation Service (NRCS) (Name and Address) Utah State Office 125 S. State, Rm 4010 Salt Lake City, UT 84138-1100			6. Recipient Organization: (Name and Address) Cedar City 10 North Main Cedar City, UT 84720 <table border="1"> <tr> <td>DUNS: 073013153</td> <td>EIN: 87-6000215</td> </tr> </table>		DUNS: 073013153	EIN: 87-6000215																							
DUNS: 073013153	EIN: 87-6000215																												
7. NRCS Program Contact: Bronson Smart, 801 524-4559 bronson.smart@ut.usda.gov	8. NRCS Administrative Contact: Pam Hubacher pam.hubacher@wdc.usda.gov		9. Recipient Program Contact: Kit Wareham, 435-865-5119 wkit@cedarcity.org	10. Recipient Administrative Contact: Kit Wareham, 435-865-5119 wkit@cedarcity.org																									
11. CFDA Number 10.923	12. Authority Emergency Watershed Protection 7 CFR Part 624		13. Type of Action New Agreement	14. Project Director																									
15. Project Title/Description: Emergency Watershed Protection - Cedar City, Iron County, UT. Projects #1 and 2. Financial & Technical Assistance. Complete agreement includes this NRCS-ADS-093 and attachments listed on page 2 of this form.																													
16. Entity Type: <input type="checkbox"/> Profit <input type="checkbox"/> Nonprofit <input type="checkbox"/> Higher Education <input type="checkbox"/> Federal <input checked="" type="checkbox"/> State/Local <input type="checkbox"/> Indian/Native American Other																													
17. Select Funding Type: <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> Non-Federal <table border="1"> <tr> <td>Original Funds Total:</td> <td>\$2,062,582.00</td> <td>\$625,025.00</td> </tr> <tr> <td>Additional Funds Total:</td> <td></td> <td></td> </tr> <tr> <td>Grand Total:</td> <td>\$2,062,582.00</td> <td>\$625,025.00</td> </tr> </table>			Original Funds Total:	\$2,062,582.00	\$625,025.00	Additional Funds Total:			Grand Total:	\$2,062,582.00	\$625,025.00	18. Accounting and Appropriation Data <table border="1"> <thead> <tr> <th>Financial Code</th> <th>Amount</th> <th>Fiscal Year</th> <th>Treasury Symbol</th> </tr> </thead> <tbody> <tr> <td>NR.ALEG08.49.5108. 16XXF BOC-4115</td> <td>\$1,875,075.00</td> <td>2016</td> <td>12X1072</td> </tr> <tr> <td>NR.ALEG08.49.5108. 16XXT BOC-2550</td> <td>\$187,507.00</td> <td>2016</td> <td>12X1072</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Financial Code	Amount	Fiscal Year	Treasury Symbol	NR.ALEG08.49.5108. 16XXF BOC-4115	\$1,875,075.00	2016	12X1072	NR.ALEG08.49.5108. 16XXT BOC-2550	\$187,507.00	2016	12X1072				
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NR.ALEG08.49.5108. 16XXT BOC-2550	\$187,507.00	2016	12X1072																										
19. APPROVED BUDGET																													
Personnel	\$	Fringe Benefits	\$																										
Travel	\$	Equipment	\$																										
Supplies	\$	Contractual	\$																										
Construction	\$ 2,500,100.00	Other	\$ 187,507.00 (TA)																										
Total Direct Cost\	\$	Total Indirect Cost	\$																										
		Total Non-Federal Funds	\$ 625,025.00																										
		Total Federal Funds Awarded	\$ 2,062,582.00																										
		Total Approved Budget	\$ 2,687,607.00																										
This agreement is subject to applicable USDA NRCS statutory provisions and Financial Assistance Regulations. In accepting this award or amendment and any payments made pursuant thereto, the undersigned represents that he or she is duly authorized to act on behalf of the awardee organization, agrees that the award is subject to the applicable provisions of this agreement (and all attachments), and agrees that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by NRCS to have been overpaid, will be refunded or credited in full to NRCS.																													

(Continuation)

NOTICE OF GRANT AND AGREEMENT AWARD			
Award Identifying Number	Amendment No.	Award/Project Period	Type of Award Instrument
68-8D43-16-214		Date of NRCS signature - 1/13/2017	Cooperative Agreement

Name and Title of Authorized Government Representative	Signature	Date
DAVID C. BROWN, State Conservationist		
Name and Title of Authorized Recipient Representative	Signature	Date

NONDISCRIMINATION STATEMENT

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

PRIVACY ACT STATEMENT

The above statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. Section 522a).

The following attachments are hereby made a part of this agreement:

- Attachment A: Statement of Work
- Attachment B: General Terms and Conditions
- Attachment C: Procurement Standards - 2 CFR 200.317 through 200.326
- Attachment D: Appendix II to 2 CFR Part 200
- Attachment E: NRCS Supplement to OSHA Parts 1910 and 1926 SF-424D (Assurances)

**STATEMENT OF WORK
BETWEEN THE
U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
AND THE
CEDAR CITY**

PROJECT: Cedar City, UT, Emergency Watershed Protection (“EWP”) FY16 Coal Creek Flood Control Project, Phase 3 – Locally Led with Technical and Financial Assistance.

This agreement is entered into by and between the U. S. Department of Agriculture, Natural Resources Conservation Service, hereinafter referred to as the “NRCS”, and Cedar City, UT, hereinafter referred to as the “Sponsor”.

I. PURPOSE

The purpose of this agreement is to provide financial and/or technical assistance to implement recovery measures that, if left undone, pose a risk to life and/or property.

II. AUTHORITY

Under the provisions of Section 216 of Public Law 81-516, Emergency Watershed Protection Program, and Title IV of the Agricultural Credit Act of 1978, Public Law 95-334, NRCS is authorized to assist the Sponsor in relieving hazards created by natural disasters that cause a sudden impairment of a watershed.

III. OBJECTIVES

The objective of this agreement is to remove watershed impairments caused by the July 28, 2013 storm event that are creating a serious threat to life and property through a locally awarded and administered construction contract. The design and installation of EWP measures are detailed in the individual damage survey report (DSRs) and listed below:

Damage Survey Report (DSR) No.	Description	Estimated Construction Cost
Cedar City-Splitter	Restore water control; stabilize channel with rock riprap & grouted rock riprap; remove sediment.	\$1,552,500
Cedar City-Upper	Protect streambanks with riprap.	\$947,600
Total Estimated Construction Cost		\$2,500,100

A. The individual Damage Survey Report(s) ("DSR") is established through discussions between the Sponsor and NRCS. It defines the site(s), work to be completed, and estimated construction costs for this project.

B. It is agreed that the total estimated construction cost are: \$2,500,100. Based on this estimate:

1. NRCS will contribute Financial Assistance Funds ("FA") in the amount of \$1,875,075 (up to 75 percent of total construction costs) as reimbursement to the Sponsor for approved on-the-ground construction costs. Construction costs are associated with the installation of the project measures including labor, equipment, and materials.
2. NRCS will contribute Technical Assistance Funds ("TA") in the amount of \$187,507 (up to 7.5 percent of total construction costs) as reimbursement for technical and administrative costs directly charged to the project. Technical and administrative costs are associated with project design and development of construction drawings and specifications; soliciting, evaluating, awarding and administering a contract, including verifying invoices and recording keeping; development of operations and maintenance plans; development and implementation of quality assurance and inspection plans. While NRCS can reimburse 100 percent of these costs (no Sponsor required cost share) up to 7.5 percent of the total construction costs, it is possible that technical and administrative costs will exceed this amount, requiring the Sponsor to contribute resources to complete technical and administrative work.
3. The Sponsor will contribute funds in the amount of \$625,025 (25 percent of the total construction costs) in either direct cash expenditures, the value of non-cash materials or services, or in-kind contributions. The value of any in-kind contribution shall be agreed to in writing prior to implementation.

IV. RESPONSIBILITIES OF THE PARTIES

A. THE SPONSOR WILL:

1. Accomplish construction of the EWP project measures by contracting, in-kind construction services, or a combination of both.
2. Ensure the contacts listed on the Notice of Award form work closely with the NRCS in carrying out the terms and conditions of the agreement. They will complete proper documents to ensure payment of funds by NRCS as requested to complete the objectives of the agreement and will be the representative for the Sponsor in all matters concerning this agreement.
3. Comply with the applicable requirements in Attachment B, "General Terms and Conditions," of this agreement.

4. Comply with all laws, regulations, Executive Orders, and other applicable terms and conditions referenced and incorporated as attachments to this agreement.
5. Acquire and provide certification to NRCS that real property rights (land and water), permits and licenses in accordance with local, state, and Federal laws necessary for the installation of EWP project measures have been obtained at no cost to NRCS prior to construction. This includes any rights associated with required environmental mitigation. Sponsors shall provide such certification on Form NRCS-ADS-78, Assurances Relating to Real Property Acquisition. Sponsors shall also provide an attorney's opinion supporting this certification. Costs related to land rights and permits are the Sponsor's responsibility and ineligible for reimbursement.
6. Accept all financial and other responsibility for excess costs resulting from their failure to obtain, or their delay in obtaining, adequate land and water rights, permits and licenses needed for the Project.
7. Provide 25% of the actual, eligible and approved construction cost, as outlined in Section III.B. These costs may be in the form of cash, in-kind construction services, or a combination of both.

Eligible construction costs are described in the approved Damage Survey Report (DSR) listed in Section III. Final construction items that are eligible construction costs will be agreed upon during the pre-design conference. These costs consist of costs from contracts awarded to contractors, and eligible Sponsor in-kind construction costs for materials, labor, and equipment. The Sponsor shall provide NRCS documentation to support all eligible construction costs.

Construction costs incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.

8. Be responsible for 100 percent of all ineligible construction costs, and 100 percent of any unapproved upgrade to increase the level of protection over and above that described in the DSR.
9. Account for and report FA and TA expenditures separately in order for expenses to be eligible for reimbursement. NRCS funding for this project is provided to the Sponsor in two separate NRCS funding accounts, one for TA and one for FA, requiring this separation.
10. For contracts, provide NRCS a copy of solicitation notice, bid abstract, and notice of contract award, or other basis of cost and accomplishment.
11. For in-kind construction services (materials, labor, and/or equipment supplied by the Sponsor), develop a Plan of Operations describing the construction services to be performed including estimated quantities and

values. The Plan of Operations shall be concurred in by NRCS at the pre-design conference. In-kind construction services for equipment shall not exceed published FEMA equipment rates unless otherwise documented and concurred in advance by NRCS.

12. The following documentation is required to support the Sponsor's request for reimbursement of in-kind construction services:
 - a. Invoices covering actual costs of materials used in constructing the eligible EWP project measures.
 - b. Records documenting the type, quality, and quantities of materials actually used in constructing the eligible EWP project measures.
 - c. Daily time records for each employee showing name, classification, wage rate, hours, and dates actually employed for constructing the eligible EWP project measures.
 - d. Equipment operating records showing the type and size of equipment, hourly rate, actual hours of operation and dates used to install the eligible EWP project measures. Equipment idle time is not eligible in-kind construction services, even if on the job site, and should not be included in the equipment operating records.
13. Provide all technical and administrative services necessary for contract solicitation, award, and administration; engineering design services; construction management and inspections, and other services. Reimbursement amount for eligible Sponsor technical and administrative services will be as described in Section III.B.2. The Sponsors will retain records to support costs incurred.
 - a. Prepare all contractual documents and contract for the project measures in accordance with 2 CFR § 200.317-326 (Attachment) and clauses referenced in Appendix II, Part 200, (Attachment), applicable state requirements, and the Sponsors' procurement regulations.
 - b. Prepare design and construction specifications, and drawings in accordance with standard engineering principles and in compliance with NRCS programmatic requirements. The construction plans shall be reviewed and approved by the Sponsors before submittal to NRCS. The construction plans shall be reviewed and approved by a Professional Engineer (PE) licenses and registered in the State of Utah before submittal to NRCS.
 - c. The contracts for design services and construction described in this Agreement shall not be awarded to the Sponsors or to any firm in which any Sponsors' official or any member of such official's immediate family has direct or indirect interest in the pecuniary profits or contracts of such firms. Reference 2 CFR § 200.318 regarding standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts.

14. Costs for technical and administrative services incurred prior to the Sponsor and NRCS signing this agreement are ineligible and will not be reimbursed.
15. Within thirty (30) calendar days of signing the project agreement, hold a pre-design conference with the Sponsor, Sponsor's design engineer, and NRCS. The design conference shall set forth design parameters concurred by both the Sponsor and NRCS. During the pre-design conference, NRCS will determine the eligible construction costs.
16. Within fourteen (14) calendar days of the pre-design conference submit to NRCS a schedule with time lines of major items to be completed. Milestones shall include, but not limited to, obtaining land rights, obtaining permits, completing any necessary surveys, completing draft engineering plans and specifications for NRCS review, completing final engineering plans and specifications, completing quality assurance plan, solicit bids, award contract, issue notice to proceed, and complete construction.
17. Prior to commencement of work and/or solicitation of bids, submit for NRCS review, the preliminary design, construction specifications, and engineering drawings prepared in accordance with standard engineering principles and design parameters set forth in the pre-design conference.
18. Upon receiving comments from NRCS, prepare the final design, construction specifications, and engineering drawings in accordance with standard engineering principles, design parameters set forth in the pre-design conference. One set of the final plans and specifications shall be submitted to NRCS for final review and concurrence prior to solicitation of bids and/or commencement of work. The final construction plans and specifications shall be signed and sealed by a licensed Professional Engineer registered in the State of Utah. A copy of the signed and seal plans and specifications shall be provided to NRCS.
19. Prior to commencement of work and/or solicitation of bids, submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.
20. Provide construction inspection in accordance with the QAP.

21. Prepare and submit for NRCS concurrence an Operation and Maintenance (O&M) Plan, if applicable, prior to commence of work. The O&M Plan shall describe the activities the Sponsor will do to ensure the project performs as designed. Upon completion of the project measures, the Sponsor shall assume responsibility for O&M.
22. Provide copies of site maps to appropriate Federal and State agencies for environmental review. Sponsor will notify NRCS of environmental clearance, modification of construction plans, or any unresolved concerns as well as copies of all permits, licenses, and other documents required by Federal, state, and local statutes and ordinances prior to solicitation for installation of the EWP project measures. All modifications to the plans and specifications shall be reviewed and concurred on by NRCS.
23. Ensure that any special requirements for compliance with environmental and/or cultural resource laws are incorporated into the project.
24. Will arrange and pay for any necessary location, removal, or relocation of utilities. EWP program regulations prohibit NRCS from reimbursing the Sponsor or otherwise paying for any such costs; nor do the costs qualify as a Sponsor cost-share contribution.
25. Ensure that technical and engineering standards and specifications of NRCS are adhered to during construction of the Project, as interpreted by NRCS Program/Technical Contact. Provide NRCS Program/Technical Contact progress reports as necessary and agreed to. Progress reports should include technical on-site inspections of work accomplished for the period, work planned, results of material tests, deficient work products and/or tests with corrective actions taken, modifications anticipated, technical problems encountered, contractual issues and other relevant information.
26. Ensure that all contractors on NRCS assisted projects are performing their work in accordance with OSHA regulations, NRCS Supplement to OSHA Parts 1910 and 1926 (Attachment), and the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Sponsor is responsible for periodically checking the contractor's compliance with safety requirements.
27. Complete and submit (on Sponsor letterhead) accrual information to the NRCS Program/Technical Contact no later than 15 days prior to the end of the quarter (submit by March 15, June 15, September 15, and December 15). NRCS requires quarterly accrual information on the value of the work that has been performed or will be performed in cooperation with NRCS, but for which an SF 270 has not yet been submitted. The U.S. Congress relies on audits of financial statements, including accrual information, to determine future funding amounts for NRCS on-going and new projects and programs.

28. Arrange for and conduct final inspection of completed project with NRCS to determine whether all work has been performed in accordance with contractual requirements. Provide a PE certification that the Project was installed in accordance with approved plans and specifications.
29. Provide PE-certified as-built drawings and quantities for the project. A copy of the as-built drawings will be submitted to the NRCS Program/Technical Contact.
30. Pay the contractor(s) as provided in the contract(s).
31. Submit copies of billings for reimbursement to NRCS on Form SF-270, "Request for Advance or Reimbursement", on a monthly, but not less than quarterly (March, June, September, and December) basis to the NRCS Program/Technical Contact. Final payment request shall be submitted within 90 calendar days of completion of the EWP project measures. All requests for reimbursement shall include all appropriate and complete documentation to support the reimbursement request. Payments will be withheld until all required documentation is submitted and complete.

The required supporting documentation for reimbursement of construction costs include invoices and proof of payment to the contractor showing the items and quantities installed and certified by the engineer of record along with any supporting documentation such as quantity calculations, rock weight tickets, etc.

The required supporting documentation for reimbursement of in-kind construction expenses will include employee time sheets, employee hourly rate, equipment operating logs, equipment hourly rate, and material quantities and invoices.

The required documentation for reimbursement of technical and administrative services will be invoices and proof of payment to consultants and/or employee time sheets along with the employee's hourly rate, hours worked, and date work was performed.

32. Be responsible for ensuring their System for Award Management (SAM) registration is active throughout the life of the agreement so that reimbursements are not delayed. NRCS cannot process a reimbursement to a sponsor unless the sponsor is registered in SAM.
33. Take reasonable and necessary actions to dispose of all contractual and administrative issues arising out of the construction contract awarded under this Agreement. This includes, but is not limited to disputes, claims, protests of award, source evaluation, and litigation that may result from the Project. Such actions will be at the expense of the Sponsor, including any legal expenses.

34. Receive payment under this Agreement using electronic funds transfer (EFT) procedures in accordance with 31 C.F.R. § 208.
35. Be responsible, without recourse to NRCS or USDA, for the settlement and satisfaction of all contractual and legal issues arising out of arrangements entered into between the Sponsors and third parties to carry out the approved Project. Matters concerning violation of law should be referred to the Federal, State, or local authority having proper jurisdiction.
36. Hold and save NRCS free from any and all claims or causes of action whatsoever resulting from the obligations undertaken by the Sponsor under this agreement or resulting from the work provided for in this agreement.
37. Retain all records dealing with the award and administration of contract(s) for three (3) years from the date of the sponsor's submission of the final Request for Reimbursement or until final audit findings have been resolved, whichever is longer. If any litigation is started before the expiration of the three (3) year period, the records are to be retained until the litigation is resolved or the end of the three (3) year period, whichever is longer. Make such records available to the Comptroller General of the United States or his or her duly authorized representative and accredited representatives of the U.S. Department of Agriculture or cognizant audit agency for the purpose of making audit, examination, excerpts, and transcripts.
38. Be responsible for all administrative expenses (including but shall not be limited to facilities, clerical expenses), and legal counsel necessary including the fees of such attorney or attorneys deemed necessary by NRCS to resolve any legal matters.
39. Submit requests for a time extension to the agreement (if necessary) in writing no less than thirty (30) days prior to the expiration date of the agreement specified in Section VI. See Attachment B, General Terms and Conditions. Submit the written, signed request to the NRCS Program/Technical Contact in addition to the Administrative Contact.
40. By signing the Agreement, the Sponsor assures the Department of Agriculture that the program or activities provided for under this Agreement will be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.

B. THE NRCS WILL:

1. Reimburse the Sponsor up to 75 percent of the actual cost of construction as Financial Assistance and up to 7.5 percent of the actual cost of construction as Technical Assistance. Funds will be expended as explained in Section III.
2. Assist Sponsor and Sponsor's engineer in establishing design parameters; determine eligible construction costs during the pre-design conference.

3. Review, comment and concur in preliminary and final plans, specifications, O&M Plan, Plan of Operations (if required) and QAP.
4. Not be substantially involved with the technical or contractual administration of this agreement, but will provide advice and counsel as needed.
5. Make periodic site visits during the installation of the EWP project measures to review construction progress, document conformance to engineering plans and specifications, and provide any necessary clarification on the Sponsor's responsibilities.
6. Upon notification of the completion of the EWP project measures, NRCS shall promptly review the performance of the Sponsor to determine if the requirements of this agreement and fund expenditures as agreed have been met.
7. Make payment to the Sponsor covering NRCS' share of the cost upon receipt and approval of Form SF-270 and supporting documentation. In the event there are questions regarding the SF 270 and supporting documentation, NRCS will contact the Sponsor in a timely manner to resolve concerns.

C. IT IS MUTUALLY AGREED:

1. This agreement may become null and void 100 calendar days after the date NRCS has signed and executed this agreement if a solicitation for bids has not been publicly advertised or a contract has not been awarded.
2. The furnishing of financial, administrative and/or technical assistance above the original funding amount by NRCS is contingent on there being sufficient unobligated and/or uncommitted funding in the EWP Program that is available for obligation in the year in which the assistance will be provided. NRCS cannot make commitments in excess of funds authorized by law or made administratively available. Congress may impose obligational limits on program funding that constrains NRCS' ability to provide such assistance.
3. The furnishing of the administrative and technical services by NRCS is contingent upon the continuing availability of appropriations by the Congress from which payment may be made and shall not obligate NRCS if the Congress fails to so appropriate.
4. In the event of default of a construction contract awarded pursuant to this Agreement, any additional funds properly allocable as construction costs required to ensure completion of the job are to be provided in the same ratio as construction funds are contributed by the parties under the terms of this Agreement. Any excess costs including interest resulting from a judgment collected from the defaulting contractor, or his or her surety, will be prorated between the Sponsor and NRCS in the same ratio as construction funds are contributed under the terms of the Agreement.

5. Additional funds, including interest properly allocable as construction costs as determined by NRCS, required as a result of decision of the CO or a court judgment in favor of a claimant will be provided in the same ratio as construction funds are contributed under the terms of this Agreement. NRCS will not be obligated to contribute funds under any Agreement or commitment made by the Sponsor without prior concurrence of NRCS.
6. The State Conservationist may make adjustments in the estimated cost to NRCS for constructing the EWP project measures. Such adjustments may increase or decrease the amount of estimated funds that are related to differences between such estimated cost and the amount of the awarded contract or to changes, differing site conditions, quantity variations, or other actions taken under the provisions of the contract. No adjustment will be made to change the cost sharing assistance provided by NRCS nor reduce funds below the amount required to carry out NRCS' share of the contract.
7. That once the project is completed and all requests for reimbursement submitted, any excess funding remaining in the agreement (over and above the NRCS commitment of up to 75 percent of actual construction costs and within the not-to-exceed amount) will be de-obligated from the agreement.
8. NRCS, at its sole discretion, may refuse to cost share should the Sponsor, in administering the contract, elect to proceed without complying with their responsibilities as set out in this agreement.
9. If inconsistencies arise between the language in Attachment A – Statement of Work and other attachments in this agreement, the language in the Statement of Work takes precedence.

V. EXPECTED ACCOMPLISHMENTS AND DELIVERABLES

The following accomplishments and deliverable will be provided to NRCS.

1. One copy of the final engineering plans, specifications signed and sealed by a licensed professional engineer, including engineer's cost estimate, and approved Plan of Operations (if applicable).
2. Signed NRCS-ADS-78 supported by an attorney's opinion.
3. One copy of the quality assurance plan.
4. One copy of the operation and maintenance plan.
5. One copy of the notice of solicitation, bid abstract, and notice of award.
6. Certification that the project was installed in accordance with the plans and specifications.
7. As-built drawings of final construction sign by a licensed professional engineer within 30 days of completion of construction.
8. Quantities of the units of work applied for each site within 30 days of completion of construction.

VI. PERIOD OF PERFORMANCE

This agreement is effective as of the date of final signature by USDA/NRCS on NRCS-ADS-093 form, Notice of Grant and Agreement Award, and continues in full force and effect through January 13, 2017. The agreement may be amended to extend the date.

VII. RESOURCES REQUIRED

A. Sponsor:

- Technical personnel to develop technically sound and feasible solutions to restore the sites and develop engineering plans and specifications and equipment and personnel to provide construction inspection.
- Administrative personnel to provided contracting services and/or procurement of items/services needed to implement the agreement, obtain land rights, and other administrative requirements identified in the agreement.
- Office space and associated office equipment to prepare reports, prepare payments requests, etc.
- Equipment and personnel if identified in a Plan of Operations.

B. NRCS

- Technical and administrative personnel to provided assistance to support the implementation of the agreement.

VIII. MILESTONES

Milestones shall include, but not limited to, the following items:

1. Pre-construction design conference within 30 days of signing agreement.
2. Submit to NRCS a schedule with time lines of major items to be completed within 14 days of the pre-design conference.
3. Acquire needed real property rights and permits (signed NRCS-ADS-78 supported by an attorney's opinion) prior to start of construction.
4. Obtaining permits.
5. Completing any necessary surveys.
6. Completing draft engineering plans and specifications for NRCS review.
7. Completing final engineering plans and specifications.
8. Completing quality assurance plan.
9. Solicit bids.
10. Award contract.
11. Issue notice to proceed.
12. Complete construction and submit as-built drawings/quantities by the date as specified in Section VI.

Revised May 2016

**NATURAL RESOURCES CONSERVATION SERVICE
U.S. DEPARTMENT OF AGRICULTURE**

**GENERAL TERMS AND CONDITIONS
GRANTS AND COOPERATIVE AGREEMENTS**

I. APPLICABLE REGULATIONS

- a. The recipient, and recipients of any subawards under this award, agree to comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
- (1) 2 CFR Part 25, "Universal Identifier and System of Award Management"
 - (2) 2 CFR Part 170, "Reporting Subaward and Executive Compensation Information"
 - (3) 2 CFR Part 180, "OMB Guidelines To Agencies On Governmentwide Debarment And Suspension (Nonprocurement)"
 - (4) 2 CFR Part 182, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)"
 - (5) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards"
- b. The recipient, and recipients of any subawards under this award, assure and certify that they have and/or will comply with the following regulations, as applicable. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
- (1) 2 CFR Part 175, "Award Term for Trafficking in Persons"
 - (2) 2 CFR Part 417, "Nonprocurement Debarment and Suspension"
 - (3) 2 CFR Part 418, "New Restrictions on Lobbying"
 - (4) 2 CFR Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)"
- c. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and to the extent applicable to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
- (1) 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles And Audit Requirements For Federal Awards"
 - (2) 48 CFR Part 31, "Contract Cost Principles and Procedures"

II. UNALLOWABLE COSTS

The following costs are not allowed:

- a. Costs above the amount authorized for the project
- b. Costs incurred after the expiration of the award including any no-cost extensions of time
- c. Costs that lie outside the scope of the approved project and any amendments thereto
- d. Compensation for injuries to persons or damage to property arising from project activities

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the NRCS administrative contact identified in the award.

III. CONFIDENTIALITY

- a. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term "confidential information" means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of NRCS.
- b. The recipient's personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient's personnel must also comply with privacy of personal information relating to natural resources conservation programs in accordance with section 1244 of Title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171).
- c. The recipient agrees to comply with NRCS guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110-246), 7 U.S.C. 8791.
- d. The recipient agrees to comply with the **"Prohibition Against Certain Internal Confidentiality Agreements:"**
 - 1. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
 - 2. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (1) of this award provision are no longer in effect.
 - 3. The prohibition in paragraph (1) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
 - 4. If NRCS determines that you are not in compliance with this award provision, NRCS:
 - a. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law;

- b. May pursue other remedies available for your material failure to comply with award terms and conditions.

IV. PRIOR APPROVAL REQUIREMENTS

The following are the most common situations requiring prior approval. However, the recipient is also bound by any other prior approval requirements of the applicable administrative provisions and Federal cost principles.

- a. Purpose or Deliverables.—When it is necessary for the recipient to modify the purpose or deliverables, the recipient must submit a written request and justification for the change along with the revised purpose or deliverables of the award to the NRCS administrative contact. The request should contain the following:
 - 1. Grant or agreement number
 - 2. Narrative explaining the requested modification to the project purpose or deliverables
 - 3. A description of the revised purpose or deliverables
 - 4. Signatures of the authorized representative, project director, or both
- b. Subcontractual Arrangement.—The recipient must submit a justification for the proposed subcontractual arrangements, a statement of work to be performed, and a detailed budget for the subcontract to the NRCS administrative contact. Subcontractual arrangements disclosed in the application do not require additional postaward approval.
- c. Absence or Change in Project Leadership.—When a project director or the person responsible for the direction or management of the project—
 - 1. Relinquishes active direction of the project for more than 3 consecutive months or has a 25 percent or more reduction in time devoted to the project, the grantee must notify the NRCS administrative contact in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications and the signature of the replacement, signifying his or her willingness to serve on the project.
 - 2. Severs his or her affiliation with the grantee, the grantee's options include—
 - i. Replacing the project director. The grantee must request written approval of the replacement from the NRCS administrative contact and must include the qualifications and the signature of the replacement signifying his or her willingness to serve on the project.
 - ii. Subcontracting to the former project director's new organization. The grantee must request approval from the administrative contact to replace the project manager and retain the award, and to subcontract to the former project director's new organization certain portions of the project to be completed by the former project director.
 - iii. Relinquishing the award. The grantee must submit to the NRCS administrative contact a signed letter by the grantee and the project director that indicates that the grantee is relinquishing the award. The letter must include the date the project director is leaving and a summary of progress to date. A final Standard Form (SF) 425 reflecting the total amount of funds spent by the recipient must be attached to the letter.

3. Transfers the award to his or her new organization, the authorized organization's representative at the new organization must submit the following to the NRCS administrative contact as soon as the transfer date is firm and the amount of funds to be transferred is known:
 - i. The forms and certifications included in the application package
 - ii. A project summary and work statement covering the work to be completed under the project (deliverables and objectives must be the same as those outlined in the approved proposal)
 - iii. An updated qualifications statement for the project director showing his or her new organizational affiliation
 - iv. Any cost-sharing requirements under the original award transfer to the new institution; therefore, cost-sharing information must be included in the proposal from the new organization

Note: The transfer of an award from one organization to another can take up to 90 days to accomplish, which may result in a delay in the project director resuming the project at the new organization.

- d. Budget Revisions.—Budget revisions will be in accordance with 2 CFR Part 200.308.
- e. No-Cost Extensions of Time.—When a no-cost extension of time is required, the recipient must submit a written request to the NRCS administrative contact no later than 30 days before the expiration date of the award. The request must contain the following:
 - The length of additional time required to complete the project and a justification for the extension
 - A summary of progress to date
 - An estimate of funds expected to remain unobligated on the scheduled expiration date
 - A projected timetable to complete the portions of the project for which the extension is being requested
 - Signature of the grantee and the project director
 - A status of cost sharing to date (if applicable)

Note: An extension will not exceed 12 months. Only in exceptional cases will more than one extension be granted. Requests for no-cost extensions received after the expiration of the award will not be granted.

V. PAYMENTS

- a. Payment by NRCS to the entity will be made monthly or quarterly (whichever is mutually agreed upon by both parties) on a reimbursable or advanced basis upon completion of work outlined herein. Payment will be executed upon the submission of a properly executed form SF-270. The SF-270 must cite the agreement number, remittance address, and billing period. The SF-270 must be sent to the NRCS administrative contact at the address identified in block 8 of the Notice of Grant/Agreement Award.
- b. Unless otherwise specified in the award, the recipient must receive payments through electronic funds transfers.

- c. Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and **31 CFR Part 205**.
- d. The method of payment between the recipient and its contractors will be in accordance with the policies and procedures established by the recipient except that the contractors may not use the USDA Office of Financial Management/National Finance Center method to request payments. If the grantee makes advance payments to contractors, the grantee must ensure that the timing of such payments is designed to minimize elapsed time between the advance payment and the disbursement of funds. Payment requests from the grantee's contractors will not be sent to NRCS for review or approval.
- e. Accounting records for all costs incurred under this award must be supported by source documentation. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subcontract award documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the approved project period of this award, including any approved no-cost extension of time. Costs that cannot be supported by source documentation or that are incurred outside of the approved project period and budget may be disallowed and may result in award funds being returned to the Federal Government by the recipient.

VI. FINANCIAL REPORTING

- a. Recipients must submit a Federal Financial Report (FFR), SF 425 and 425A, in accordance with the following schedule (recipients may download the applicable form at <http://www.forms.gov>):

<u>Quarterly Schedule</u>	<u>Report Due Date</u>
October 1 to December 31	January 31
January 1 to March 31	April 30
April 1 to June 30	July 30
July 1 to September 30	October 30

Reports must be submitted on an accrual accounting basis. Failure to submit reports in accordance with the above schedule may result in suspension or termination of award.

- b. A final Report must be submitted no later than 90 days after the completion of the award. For final FFRs, reporting end date must be the end date of the project or agreement period. The reports should be submitted to the NRCS administrative contact identified in award notifications.

VII. PERFORMANCE MONITORING AND REPORTING

- a. The recipient is responsible for monitoring day-to-day performance and for reporting to NRCS. If the project involves subcontractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
- b. Every 6 months the recipient must submit a written progress report. Each report must cover—

1. A comparison of actual accomplishments with the goals and objectives established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
 2. The reasons why goals and objectives were not met, if appropriate.
 3. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit cost.
- c. The recipient must submit a final performance report within 90 days after completion of project.

VIII. SPECIAL PROVISIONS

- a. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
- b. Employees of NRCS will participate in efforts under this agreement solely as representatives of the United States. To this end, they may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, NRCS employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in efforts regarding such parties until approved by the agency.
- c. Employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement.

IX. PATENTS, INVENTIONS, COPYRIGHTS, AND ACKNOWLEDGMENT OF SUPPORT AND DISCLAIMER

- a. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
- b. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the Federal agency within 2 months after the inventor discloses it in writing to contractor personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to:

Acquisitions Division
Grants and Agreements Services Branch
1400 Independence Avenue, SW.
Room 6823 South Building
Washington, DC 20250

- c. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

- d. The following acknowledgment of NRCS support must appear in the publication of any material, whether copyrighted or not, and any products in electronic formats (World Wide Web pages, computer programs, etc.) that is substantially based upon or developed under this award:

- “This material is based upon work supported by the Natural Resources Conservation Service, U.S. Department of Agriculture, under number [recipient should enter the applicable award number here].”

In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

- “Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture.”

- e. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA and NRCS home pages. If the material is too small to permit the full nondiscrimination statement to be included, the material must, at a minimum, include the statement:

- “USDA is an equal opportunity provider and employer.” Any publication prepared with funding from this agreement must include acknowledgement to USDA, Natural Resources Conservation Service.”

The recipient is responsible for ensuring that an acknowledgment of NRCS is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss in a substantial way work funded by this award.

X. COST-SHARING REQUIREMENTS

- a. If the award has specific cost-sharing requirements, the cost-sharing participation in other projects may not be counted toward meeting the specific cost-share requirement of this award, and must come from non-Federal sources unless otherwise stated in the applicable program announcement.
- b. Should the recipient become aware that it may be unable to provide the cost-sharing amount identified in this award, it must—
1. Immediately notify the NRCS administrative contact of the situation.
 2. Specify the steps it plans to take to secure replacement cost sharing.
 3. Indicate the plans to either continue or phase out the project in the absence of cost sharing.
- c. If NRCS agrees to the organization’s proposed plans, the recipient will be notified accordingly. If the organization’s plans are not acceptable to NRCS, the award may be subject to termination. NRCS modifications to proposed cost sharing revisions are made on a case-by-case basis.
- d. Failure by the recipient to notify NRCS in accordance with paragraph (b) above may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by NRCS of some of the NRCS funds provided under the award, and possible termination of the

award, and may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment.

- e. The recipient must maintain records of all project costs that are claimed by the recipient as cost sharing as well records of costs to be paid by NRCS. If the recipient's cost participation includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.

XI. PROGRAM INCOME

Income derived from patents, inventions, or copyrights will be disposed of in accordance with the recipient's own policies. General program income earned under this award during the period of NRCS support must be added to total project funds and used to further the purpose and scope of this award or the legislation under which this award is made.

XII. NONEXPENDABLE EQUIPMENT

Recipients purchasing equipment or products with funds provided under this award are encouraged to use such funds to purchase only American-made equipment and products. Title to nonexpendable equipment purchased with award funds will vest in the recipient upon completion of the award project and acceptance by NRCS of required final reports. When equipment is no longer needed by the recipient and the per-unit fair market value is less than \$5,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to NRCS. However, if the per-unit fair market value is \$5,000 or more, the recipient must submit a written request to the NRCS administrative contact for disposition instructions.

XIII. LIMIT OF FEDERAL LIABILITY

The maximum financial obligation of NRCS to the recipient is the amount of funds indicated in the award as obligated by NRCS. However, in the event that an erroneous amount is stated on the approved budget, or any supporting document relating to the award, NRCS will have the unilateral right to make the correction and to make an appropriate adjustment in the NRCS share of the award to align with the Federal amount authorized.

XIV. MODIFICATIONS AND TERMINATIONS

NRCS may amend or modify the award through an exchange of correspondence between authorized officials of the recipient and NRCS. The award is subject to termination if NRCS determines that the recipient has failed to comply with the terms and conditions of the award. In the event that the award is terminated, the financial obligations of the parties will be those set forth in 2 CFR Part 200.339.

XV. AWARD CLOSEOUT

Award closeout is the process by which NRCS determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.

Procurement Standards – 2 CFR § 200.317 through §200.326

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with § 200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section § 200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow § 200.318 General procurement standards through § 200.326 Contract provisions.

§ 200.318 General procurement standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

§ 200.322 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.323 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a

starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.324 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Code of Federal Regulations / Title 2 - Grants and Agreements / Vol. 1 / 2014-01-01195

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. **(Not required for EWP program)**

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or

under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Code of Federal Regulations / Title 2 - Grants and Agreements / Vol. 1 / 2014-01-01196

(K) See § 200.322 Procurement of recovered materials.

**NATURAL RESOURCES CONSERVATION SERVICE
SUPPLEMENT TO OSHA PARTS 1910 AND 1926
CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS**

The Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, Construction Industry Standards and Interpretations, and with this supplement.

Requests for variances or waiver from this supplement are to be made to the Contracting Officer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for a waiver or a variance shall include--

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Contracting Officer to render a decision.

No waiver or variance will be approved if it endangers any person. The Contractor shall not proceed under any requested revision of provision until the Contracting Officer has given written approval. The Contractor is to hold and save harmless the Natural Resources Conservation Service free from any claims or causes of action whatsoever resulting from the Contractor or subcontractors proceeding under a waiver or approved variance.

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

1.0 GENERAL CONTRACTOR REQUIREMENTS:

1.1 SAFETY PROGRAM. Each Contractor is to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The Contractor is to submit in writing a proposed comprehensive safety program to the Contracting Officer for approval before the start of construction operations. The program is to specifically state what provisions the Contractor proposes to take for the health and safety of all employees, including subcontractors and rental equipment operators. The program shall be site specific and provide details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

1.2 PRECONSTRUCTION SAFETY MEETING. Representatives for the Contractor are to meet with the Contracting Officer (CO) or the CO's representative before the start of construction to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

1.3 JOINT SAFETY POLICY COMMITTEE. The Contractor or designated on-site representative is to participate in monthly meetings of a joint Safety Policy Committee, composed of the Natural Resources Conservation Service (Contracting Local Organization in locally awarded contracts) and Contractor supervisory personnel. At these meetings the Contractor's project manager and the Contracting Officer will review the effectiveness of the Contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

1.4 SAFETY PERSONNEL. Each Contractor is to designate a competent supervisory employee satisfactory to the Contracting Officer to administer the safety program.

1.5 SAFETY MEETINGS. A minimum of one "on-the-job" or "toolbox" safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all construction personnel at the jobsite. The Contractor is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

1.6 SAFETY INSPECTION. The Contractor shall perform frequent and regular safety inspections of the jobsite, materials, and equipment, and shall correct deficiencies.

1.7 FIRST AID TRAINING. Every Contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

1.8 REPORTS. Each Contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the Contracting Officer. A copy of all reports is to be provided to the Contracting Officer. All fatal or serious injuries are to be reported immediately to the Contracting Officer, and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the Contracting Officer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The Contractor is to assist and cooperate fully with the Contracting Officer in conducting accident investigations. The Contracting Officer is to be furnished all information and data pertinent to investigation of an accident.

1.9 CERTIFICATION OF INSURANCE. Contractors are to provide the Contracting Officer or his or her authorized representative with certificates of insurance before the start of operations indicating full compliance with State Worker's Compensation statutes, as well as other certificates of insurance required under the contract.

2.0 FIRST AID AND MEDICAL FACILITIES:

2.1 FIRST AID KITS. A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least 1 kit for each 25 employees. The first aid kits are to be moisture proof and dust tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

2.2 EMERGENCY FIRST AID. At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the Contractor to care for injured employees. The names of the certified employees shall be posted at the jobsite.

2.3 COMMUNICATION AND TRANSPORTATION. Prior to the start of work, the Contractor is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

2.4 FIRST AID AND MEDICAL REPORTS. The Contractor is to maintain a record system for first aid and medical treatment on the jobsite. Such records are to be readily available to the Contracting Officer and are to include--

- (a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;
- (b) Cumulative record of injury for each individual;
- (c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- (d) Required records for worker's compensation.

2.5 SIGNS AND DIRECTIONAL MARKINGS. Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

2.6 EMERGENCY LISTING. A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

3.0 PHYSICAL QUALIFICATIONS OF EMPLOYEES:

3.1 GENERAL REQUIREMENTS. Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

3.2 HOIST OPERATORS. Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The Contractor is to submit a copy of each certification to the Contracting Officer.

3.3 HEAVY EQUIPMENT OPERATORS. It is recommended that operators of trucks and heavy construction equipment be given physical examinations to determine if they are physically qualified to perform their assigned work without endangering themselves or others.

3.4 MOTOR VEHICLE OPERATORS. Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated. The operators must have passed a physical examination administered by a licensed physician within the past year showing that they are physically qualified to operate vehicles safely.

4.0 PERSONAL PROTECTIVE EQUIPMENT:

4.1 HARDHAT AREAS. The entire jobsite, with the exception of offices, shall be considered a hardhat area. All persons entering the area are, without exception, required to wear hardhats. The Contractor shall provide hardhats for visitors entering hardhat areas.

4.1.1 LABELS. Hardhats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

4.2 POSTING. Signs at least 3 by 4 feet worded as follows with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hardhat areas:

CONSTRUCTION AREA - HARDHATS REQUIRED BEYOND THIS POINT

These signs are to be furnished and installed by the Contractor at entries to shops, construction yards, and job access points.

4.3 SAFETY GOGGLES (DRILLERS)

4.3.1 DRILLERS AND HELPERS. Drillers and helpers operating pneumatic rock drills must wear protective safety goggles.

5.0 MACHINERY AND MECHANIZED EQUIPMENT:

5.1 SAFE CONDITION. Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe operating condition and appropriate for the intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery is to be used by equipment operators.

5.2 TAGGING AND LOCKING. The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure is to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work. Mixer barrels are to be securely locked out before permitting employees to enter them for cleaning or repair.

5.3 HAUL ROADS FOR EQUIPMENT

5.3.1 ROAD MAINTENANCE. The Contractor shall maintain all roadways, including haul roads and access roads, in a safe condition so as to eliminate or control dust and ice hazards. Wherever dust is a hazard, adequate dust-laying equipment shall be available at the jobsite and utilized to control the dust.

5.3.2 SINGLE-LANE HAUL ROADS. Single-lane haul roads with two-way traffic shall have adequate turnouts. Where turnouts are not practical, a traffic control system shall be provided to prevent accidents.

5.3.3 TWO-WAY HAUL ROADS. On two-way haul roads, arrangements are to be such that vehicles travel on the right side wherever possible. Signs and traffic control devices are to be employed to indicate clearly any variations from a right-hand traffic pattern. The road shall be wide enough to permit safe passage of opposing

traffic, considering the type of hauling equipment used.

5.3.4 DESIGN AND CONSTRUCTION OF HAUL ROADS. Haul road design criteria and drawings, if requested by the Contracting Officer, are to be submitted for approval prior to road construction. Sustained grades shall not exceed 12 percent and all curves shall have open-sight line with as great a radius as practical. All roads shall be posted with curve signs and maximum speed limits that will permit the equipment to be stopped within one-half the minimum sight distance.

5.3.5 OPERATORS. Machinery and mechanized equipment shall be operated only by authorized qualified persons.

5.3.6 RIDING ON EQUIPMENT. Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

5.3.7 GETTING ON OR OFF EQUIPMENT. Getting on or off equipment while the equipment is in motion is prohibited.

5.3.8 HOURS OF OPERATION. Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

5.4 POWER CRANES AND HOISTS (TRUCK CRANES, CRAWLER CRANES, TOWER CRANES, GANTRY CRANES, HAMMERHEAD CRANES, DERRICKS, CABLEWAYS, AND HOISTS)

5.4.1 PERFORMANCE TEST. Before initial onsite operation, at 12-month intervals, and after major repairs or modification, power cranes, derricks, cableways, and hoists must satisfactorily complete a performance test to demonstrate the equipment's ability to safely handle and maneuver the rated loads. The tests shall be conducted in the presence of a representative of the Contracting Officer. Test data shall be recorded and a copy furnished the Contracting Officer.

5.4.2 PERFORMANCE TEST—POWER CRANES (Crawler mounted, truck mounted and wheel mounted). The performance test is to be carried out as per ANSI requirements. The test is to consist of raising, lowering, and braking the load and rotating the test load through 360° degrees at the specified boom angle or radius. Cranes equipped with jibs or boom-tip extensions are to be tested using both the main boom and the jib, with an appropriate test load in each case.

5.4.3 PERFORMANCE TEST—DERRICKS, GANTRY CRANES, TOWER CRANES, CABLEWAYS, AND HOISTS, INCLUDING OVERHEAD CRANES. This equipment is to be performance tested as per ANSI requirements.

5.4.4 BOOM ANGLE INDICATOR. Power cranes (includes draglines) with booms capable of moving in the vertical plane shall be provided with a boom angle indicator in good working order.

5.4.5 CRANE TEST CERTIFICATION. The performance test required by 5.4.2 and 5.4.3 is fulfilled if the Contractor provides the Contracting Officer a copy of a certificate of inspection made within the past 12 months by a qualified person or by a government or private agency satisfactory to the Contracting Officer.

5.4.6 POSTING FOR HIGH VOLTAGE LINES. A notice of the 10-foot (or greater) clearance required by OSHA 1926.550, Subpart N, shall be posted in the operator's cab of cranes, shovels, boom-type concrete pumps, backhoes, and related equipment.

5.4.7 BOOM STOPS. Cranes or derricks with cable-supported booms, except draglines, shall have a device attached between the gantry of the A-frame and the boom chords to limit the elevation of the boom. The device shall control the vertical motions of the boom with increasing resistance from 83° or less, until completely stopping the boom at not over 87° above horizontal.

5.4.8 SAFETY HOOKS. Hooks used in hoisting personnel or hoisting loads over construction personnel or in the immediate vicinity of construction personnel shall be forged steel equipped with safety keepers. When shackles are used under these conditions, they shall be of the locking type or have the pin secured to prohibit turning.

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

5.5.1 ROLLOVER PROTECTIVE STRUCTURES. OSHA 1926, Subpart W, Overhead Protection, Sections 1001 and 1002 are applicable regardless of the year in which the equipment was manufactured and regardless of the struck capacity of the equipment.

5.5.2 EQUIPMENT REQUIRING ROPS. The requirement for ROPS meeting 5.5.1 above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, water tankers (excluding trucks with cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

5.5.3 EQUIPMENT REQUIRING SEATBELTS. The requirements for seatbelts as specified in OSHA Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations, Section 1926.602 shall also apply to self-propelled compactors and rollers, and rubber-tired skid-steer equipment.

6.0 LADDERS AND SCAFFOLDING:

6.1 LADDERS. OSHA 1926, Subpart L - Section 450. Ladders shall be used as work platforms only when use of small hand tools or handling of light material is involved. No work requiring lifting of heavy materials or substantial exertion shall be done from ladders.

6.2 SCAFFOLDING. OSHA 1926, Subpart L - Section 451. Scaffolds, platforms or temporary floors shall be provided for all work except that which can be done safely from the ground or similar footing.

6.3 SAFETY BELTS, LIFELINE, AND LANYARDS. OSHA 1926, Subpart E, Section 104. Lifelines, safety belts and lanyards independently attached or attended, shall be used when performing such work as the following when the requirements of 6.1 or 6.2 above cannot be met.

- (a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.
- (b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.
- (c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number: 4040-0009
Expiration Date: 06/30/2014

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.


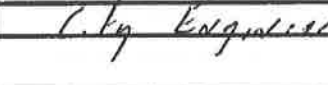
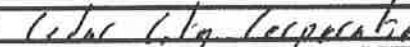
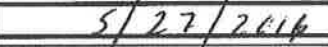
As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of

Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
	
APPLICANT ORGANIZATION	DATE SUBMITTED
	

CEDAR CITY COUNCIL
AGENDA ITEM C

INFORMATION SHEET

TO: Mayor and City Council

FROM: Randall McUne

DATE: July 5, 2016

SUBJECT: IT Services

DISCUSSION: For years Cedar City has employed the services of Mountain West Computers for maintenance, repairs and other IT needs. The cost has been very reasonable and the service has been good. The staff has been professional and helpful as the City's IT needs have grown.

With the increased use of software and greater concerns of cyber security, the senior staff has discussed options for IT services – from requesting a full time IT position to continuing with contracted IT services from a qualified firm. In the end, the staff feels that financially and technically it may be better to continue with a qualified IT provider, who, with a qualified staff, would be able to meet the City's needs.

A RFP was developed that expanded the "Scope of Work" from what we have been receiving. Proposals were solicited and a committee of City staff was formed to review the four proposals that were received. Two of the four proponents were asked to participate in an interview with the committee to gain a better understanding of what services would be provided for the proposed cost. Mountain West Computers and Executech are the finalists.

Mountain West Computers was the most affordable option and installed most of our current computers. Executech was the second most affordable option and has, by far, the most experience of the four proponents, especially with security and legal compliance.

In the opinion of the committee, both firms offer services that would continue to keep the City's IT services functioning. The staff desires to receive quality, assertive, and proactive services to maintain and improve IT security and functional systems.

The proposed annual costs in each of the responses were:

Mountain West Computers- \$45,000
Executech - \$74,100
Symtech - \$93,600
Les Olson Company - \$145,320

Additional information will be provided in the work meeting.

CEDAR CITY COUNCIL
AGENDA ITEM 7

INFORMATION SHEET

TO: Mayor and City Council

FROM: Ryan Marshall & Jeff Hunter

DATE: 6/30/2016

SUBJECT: Excavator Purchase – Storm Drain Division

DISCUSSION: The purchase of an excavator for the Storm Drain Division was approved for the FY 2017 budget. Requests for bids were sent with the criteria that the excavator be on a 3-year buy-back-purchase. We would purchase the equipment and the company would buy it back after 3 years, at which time we could purchase a brand new machine using the buy-back purchase price as a credit toward the new machine.

We received 4 quotes, 3 from local companies and one from St. George. Attached are the quotes from these companies. Listed below is a breakdown of the quotes.

Century Equipment:

- | | |
|--------------------------------------|--------------------------------------|
| • Kobelco | \$210,000.00 |
| 3-year buy back price | <u>(\$100,000.00)</u> |
| Total machine cost for 3-year period | \$110,000.00 or \$36,666.67 per year |
| • Case | \$240,500.00 |
| 3-year buy back price | <u>(\$100,000.00)</u> |
| Total machine cost for 3-year period | \$140,500.00 or \$46,833.33 per year |

Wheeler Machinery

- | | |
|--------------------------------------|-------------------------------------|
| • Caterpillar | \$226,794.60 |
| 3-year buy back price | <u>(\$199,900.00)</u> |
| Total machine cost for 3-year period | \$ 26,894.60 or \$8,964.87 per year |

John Deere

- | | |
|---------------------|--------------|
| • John Deere 250GLC | \$245,466.00 |
| NO BUY BACK PROGRAM | |

We are recommending the Caterpillar from Wheeler Machinery which will cost the City \$8,964.87 for the 3-year period, after which time we will be able to use the buy-back price of \$199,900.00 toward the purchase of a new excavator. All equipment met the bid criteria for features.



Customer Quotation & Order Form

1350 South 2000 West
Springville, UT 84663
Phone (801) 794-1463
Fax (801) 794-1414

453 North 1000 West
Logan, UT 84321
Phone (435) 782-1533
Fax (435) 782-5722

482 North Main Street
Cedar City, Utah 84720
Phone (435) 888-4406
Fax (435) 888-2382

548 32 Road
Clifton, CO 81520
Phone (970) 434-7363
Fax (970) 434-7367

2030 Sunset Drive
Rock Springs, WY 82901
Phone (307) 382-6670
Fax (307) 382-6674

655 Highway 51 Bypass North
Dyersburg, TN 38024
Phone (731) 285-2675
Fax (731) 285-2677

1097 Highway 3
Durango, CO 81301
Phone (970) 247-0522
Fax (970) 247-0721

6301 Edith Blvd NE
Albuquerque, NM 87107
Phone (505) 433-2246
Fax (505) 433-4414

Customer's Name Cedar City Corporation			Deliver To: Jeff Hunter		
Address 716 North Airport Rd.			Address		
City or Town Cedar City	State Utah	Zip Code 84721			
Date 06/23/16	Expected delivery date	Account No.	Invoice No.	Phone Number 435-233-0059	

QUANTITY	DESCRIPTION OF GOODS	Price
1	Kobelco Sk260LC-10 T4 Final Excavator	210,000.00
	Cab, Heater, Air Conditioner, AM/FM Radio, Rear View Camera, Air Heated Suspension Seat,	
	Standard Boom, Standard Arm 9'9", Rotation and 2 way Proportional Auxiliary Hydraulics with Hand	
	Control, Strickland Hydraulic Quick Coupler, Strickland Hydraulic Thumb, Strickland 48" Bucket, and all	
	other Standard Features.	
	Ko Pro 3 Year 3000 Hour Full Machine Warranty	
	3 Year 3000 Hour Buy Back Purchase Price \$100,000.00	
* SUBJECT TO CREDIT & MANAGEMENT APPROVAL *		

TRADE-IN OF EQUIPMENT

S/N

Century Equipment Co. warrants the above described Equipment only to the extent of the manufacturer's written warranty in effect on date of delivery. No other warranty is expressed or implied except as noted below or signed and attached in writing to this document by Century Equipment Co.

Century Equipment Co. makes the following optional warranties: (If none, write none)

None As-Is

TOTAL TRADE VALUE	-
TOTAL AMOUNT	210,000.00
DEDUCT TRADE IN	-
CASH DIFFERENCE	210,000.00
SALES TAX	0.000%
TRADE PAYOFF (if applicable)	-
OTHER	
TOTAL CASH PRICE	\$ 210,000.00
LESS CASH RECEIVED	-
BALANCE DUE ON DELIVERY	\$ 210,000.00

Read Reverse Side Before Signing

Signature of Purchaser or Agent

Date

Signature of Purchaser or Agent

Date

Witnessing Sales Representative of Century Equipment Company, Inc.

Date

Order Accepted By:
CENTURY EQUIPMENT COMPANY, INC.

Jac

Above Quotation Valid Until This Date

Acceptance Signature Gen. Mgr., Sales Mgr., or Controller

6/28/2016

Date



4343 Century Drive, Salt Lake City, UT 84157

Phone (801) 282-5781 Fax (801) 262-5780 www.centuryeq.com

Customer Quotation & Order Form

1350 South 2000 West
Springville, UT 84683
Phone (801) 794-1483
Fax (801) 794-1414

453 North 1000 West
Logan, UT 84321
Phone (435) 762-1633
Fax (435) 762-8722

482 North Main Street
Cedar City, Utah 84720
Phone (435) 586-4408
Fax (435) 586-2382

549 32 Road
Clifton, CO 81520
Phone (970) 434-7383
Fax (970) 434-7387

2030 Sunset Drive
Rock Springs, WY 82901
Phone (307) 382-6570
Fax (307) 382-6574

855 Highway 51 Bypass North
Dyersburg, TN 38024
Phone (731) 285-2875
Fax (731) 285-2877

1097 Highway 3
Durango, CO 81301
Phone (970) 247-0522
Fax (970) 247-9721

6301 Edith Blvd NE
Albuquerque, NM 87107
Phone (505) 433-2248
Fax (505) 433-4414

Customer's Name Cedar City Corporation		Deliver To:	
Address 716 North Airport Rd		Address:	
City or Town Cedar City	State Utah	Zip Code 84721	
Date 06/23/16	Expected delivery date	Account No.	Invoice No.
		Phone Number 435-233-0059	

QUANTITY	DESCRIPTION OF GOODS	Price
1	Case CX250D LC STD T4 Final Excavator Cab, Heater, Air Conditioner, AM/FM Radio, Rear View Camera, Side View Camera, Sun Visor, Rain Deflector, Standard Boom, Standard Arm 9'10", Multi-Functioning Auxiliary Hydraulics with Pressure Setting, Standard Working Lights, Free Swing, Strickland Hydraulic Quick Coupler, Strickland Hydraulic Thumb, Strickland 48" Bucket, and all other Standard Features. 3 Year 3000 Hour ProCare Full Machine Warranty. 3 Year 3000 Hour ProCare Planned Maintenance and Telematics. 3 Year 3000 Hour Buy Back Purchase Price \$100,000.00	240,500.00
* SUBJECT TO CREDIT & MANAGEMENT APPROVAL *		

TRADE-IN OF EQUIPMENT

	S/N

Century Equipment Co. warrants the above described Equipment only to the extent of the manufacturer's written warranty in effect on date of delivery. No other warranty is expressed or implied except as noted below or signed and attached in writing to this document by Century Equipment Co.
Century Equipment Co. makes the following optional warranties: (If none, write none)

None As-Is

Read Reverse Side Before Signing

Signature of Purchaser or Agent	Date	TOTAL TRADE VALUE	-
		TOTAL AMOUNT	240,500.00
		DEDUCT TRADE IN	-
		CASH DIFFERENCE	240,500.00
		SALES TAX	0.000%
		TRADE PAYOFF (If applicable)	-
		OTHER	
		TOTAL CASH PRICE	\$ 240,500.00
		LESS CASH RECEIVED	-
		BALANCE DUE ON DELIVERY	\$ 240,500.00

Witnessing Sales Representative of Century Equipment Company, Inc.

Date

Order Accepted By:
CENTURY EQUIPMENT COMPANY, INC.

Jac

Above Quotation Valid Until This Date

Acceptance Signature Gen. Mgr., Sales Mgr., or Controller

6/28/2016

Date

Sell Price Outright Purchase	\$211,900.00
Add Hydraulic Thumb Option	+ \$14,894.60
After Tax Balance	\$226,794.60

GUARANTEED BUY BACK PRICE:	\$199,900
<i>Based on a 3 year 2500 hour maximum usage</i>	
<i>Subject to final inspection Same terms as Lease option</i>	

WARRANTY

Standard Warranty: Premier 12 Months Parts and Labor

F.O.B./TERMS

Cedar City

PAYMENT TERMS with 3 year lease option.

The above lease is based on the following:

- Taxes are extra on the monthly payments and the buy-out
- If the machine is not purchased at the end, then it must be returned in average condition with normal wear-and-tear
- The customer is responsible for all maintenance and repairs on the machine using genuine Cat parts only
- Tires, undercarriage, and all ground engaging tools (i.e. teeth, cutting edges) must be at 50% remaining, minimum, if the unit is not purchased at the end of the lease

Accepted by _____ on _____

Signature



Quote Summary

Prepared For:

CEDAR CITY CORPORATION
2090 W Royal Hunte Dr
Cedar City, UT 84720
Business: 435-586-2950

Prepared By:

DILLON JUDD
Honnen Equipment Co.
831 East Factory Drive
St. George, UT 84790
Phone: 435-652-8003
dillonjudd@honnen.com

Quote Id:	13390699
Created On:	19 May 2016
Last Modified On:	21 June 2016
Expiration Date:	30 June 2016

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 250GLC EXCAVATOR BASE	\$ 245,466.00 X	1 =	\$ 245,466.00
Equipment Total			\$ 245,466.00

Quote Summary

Equipment Total	\$ 245,466.00
SubTotal	\$ 245,466.00
Total	\$ 245,466.00
Balance Due	\$ 245,466.00

Salesperson : X _____**Accepted By : X** _____

Confidential

**CEDAR CITY COUNCIL
AGENDA ITEM 8**

DECISION PAPER

TO: Mayor and City Council

FROM: Mike Phillips

DATE: 29 June 2016

SUBJECT: Property Disposal

PROBLEM:

The Fire Department has been approved and received a new complete set of extrication equipment at a cost of \$42,104.00 through the region all hazards team; which comes from Department of Homeland Security. This was an item identified item in last year's Fire Departments 5-Year Capital Acquisition for FY 16/17. Part of the region grant requires that we reallocate one of our older sets of extrication equipment within the region. listed below is the equipment we are proposing be moved to another department within the Five County Region. Our vendor estimates the value of the tools at \$7,250. This estimate was based on current equipment costs and their depreciation.

Extrication Equipment

Description	Serial Number	Part Number	Model	Brand
Power-Head	02061228	Not available	GH2S-XLA	Amkus
Combi-Tool	06111541	200201 46300D	AMK-25C	Amkus
Cutter	09108	Not available	Not available	Amkus
Long Ram	00011158	Not available	Not available	Amkus
Short Ram	193	Not available	Not available	Amkus

In the spaces indicating "Not available" the tool did not exhibit a nameplate containing the information. The serial numbers listed for the short ram and cutter.

RECOMMENDATION: To dispose of the listed extrication equipment as outlined.

**CEDAR CITY COUNCIL
AGENDA ITEM 8**

INFORMATION SHEET

TO: Mayor and City Council

FROM: Jeff Hunter

DATE: July 1, 2016

SUBJECT: Disposal of Property

DISCUSSION: With the purchase of two (2) new dump trucks and a new solid waste trash truck, we would like to surplus the two (2) oldest dump trucks in our fleet and the oldest solid waste trash truck in our solid waste fleet. This will be done through the Public Surplus Auction site, and will be taken care of by Public Works.

**CEDAR CITY
COUNCIL AGENDA ITEM 9
STAFF INFORMATION SHEET**

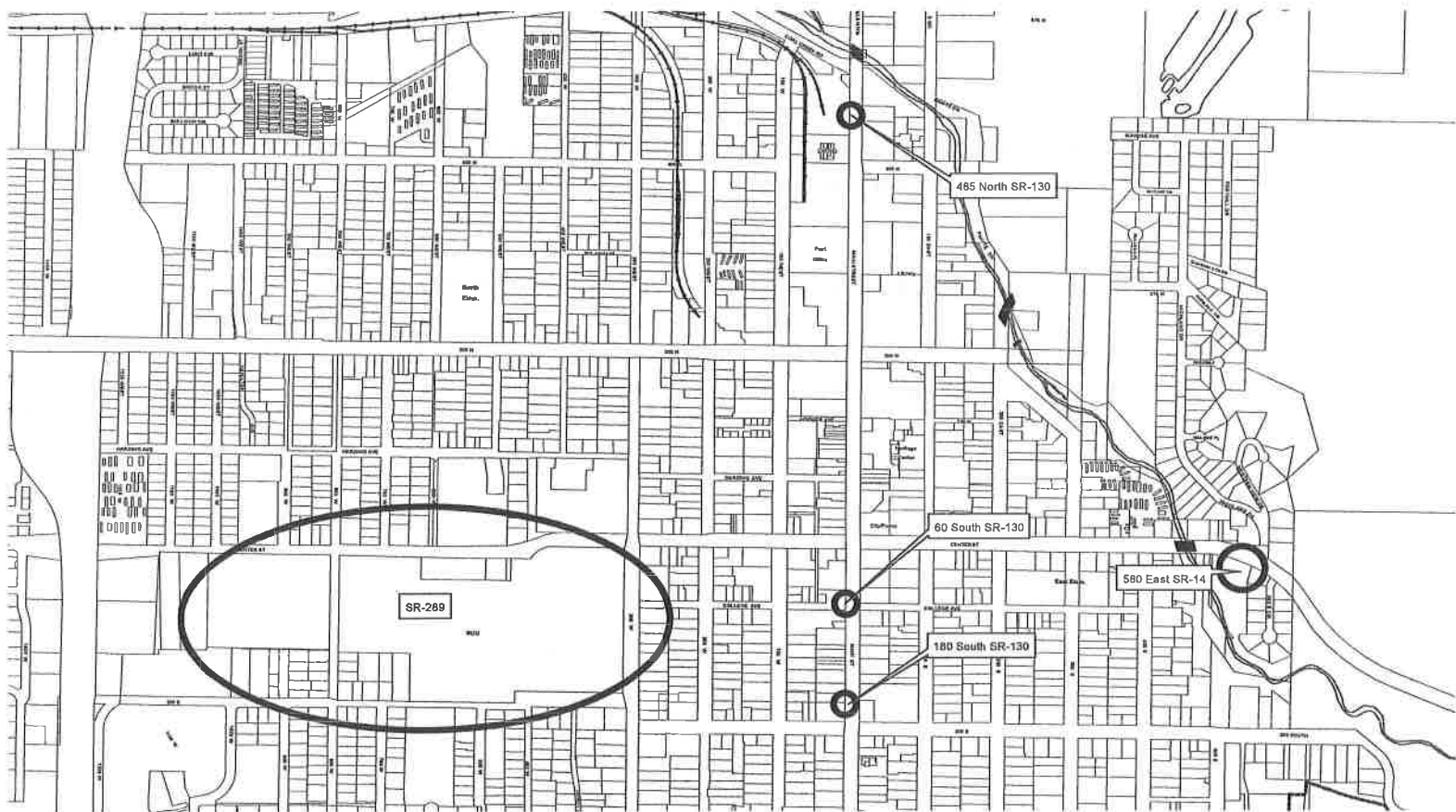
TO: Mayor and Council

FROM: Kit Wareham

DATE: July 6, 2016

SUBJECT: Review Cooperative Agreement with Utah Department of Transportation (UDOT) to Replace Curb, Gutter, Sidewalk and Asphalt on UDOT Rights of way throughout the City

As described in the attached agreement UDOT has agreed to enter into a cooperative agreement with the City to make repairs to Curb, Gutter, Sidewalk and Asphalt in certain areas in the City as shown on the attached drawing. UDOT will be contributing \$91,790 to the project and the City on the property owners portion will be \$27,836. Nearly all the of City's portion will be in-kind work to remove the existing damaged curb, gutter, sidewalk and asphalt. This work will be done by the City Streets Division.





State of Utah
Department of Transportation

Cooperative Agreement Local Agency Performing Work for UDOT	Project Description: Curb and Gutter Repairs Local Agency: Cedar City Location: SR-130, SR-289, SR-14	\$91,790
Pin:14632 FINET Program: Project: 72387		Date Executed

THIS AGREEMENT, made and entered into on the executed date , by and between the **UTAH DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**UDOT**", and Cedar City , a political subdivision of the State of Utah, hereinafter referred to as the "**Local Agency**."

UDOT requested that the Work be included in the Local Agency's Project. Subject to the attached provisions, **Local Agency** will include the following items into its Project. Unless the parties agree to a lump sum, upon signing this Agreement, UDOT agrees that the costs shown are estimates and that it will be responsible for paying the actual costs associated with these items, based on unit bid prices, and actual quantities placed. If a lump sum payment is specified, UDOT will not pay for any additional costs beyond the lump sum payment amount.

Description of Work:

Curb and gutter repairs per attached estimate items 2, 3, 4, 5 and 6. UDOT will reimburse Cedar city for actual cost of each item (2 through 6), up to the estimated total shown as "UDOT Amount". Cedar City will administer the contracts and invoice UDOT for actual cost or estimated total as described, whichever is lower.

Costs to include:

List or Description of Items

Item #	Item Description	Estimated Quantity	Unit Price	Estimated Cost
#1	<i>Curb & Gutter Repairs, per attached estimate items 2, 3, 4, 5 and 6.</i>			\$91,790
Estimated Total Cost				\$91,790

LUMP SUM PAYMENT: TOTAL AMOUNT TO BE PAID BY UDOT
(Fill in only if actual cost approach is not used.)

Project Completion Date: TDB
UDOT Region 4, 5340 W 200 S #300, Hurricane UT 84737 or email to kstarks@utah.gov, phone 801-699-0263.

Billing must be submitted within 3 months of work completion date to Kathy Starks,

If the actual costs exceed the agreed maximum total cost, **Local Agency** will immediately notify **UDOT** and **UDOT** can determine whether to reduce the scope of Work or continue with the Work at the increased cost. Once final **UDOT** signoff has occurred, the **Local Agency** will submit the receipts of payments for the Work to the **UDOT** Region office. **UDOT** will process the payment of the committed amount or the direct costs of approved activities, whichever is less, within 45 days and send a check to the **Local Agency**.

Total Estimated Reimbursement to the Local Agency is \$91,790

Provisions

Local Agency will include the UDOT's Work provided UDOT pays the actual costs incurred for the Work. Local Agency's contractor will perform the Work described in this Agreement in accordance with UDOT's plans and specifications. Local Agency will notify UDOT two weeks in advance prior to starting the Work so UDOT may inspect the Work. UDOT has the right to inspect the Work but may choose not to exercise this right. Regardless of any inspection by UDOT, Local Agency is still required to construct the Work in accordance with the plans and specifications. UDOT, through its inspection of the Work, will provide Local Agency with information addressing any problems or concerns UDOT may have with acceptance of said Work. Upon completion of the Work, the Local Agency will contact UDOT for a final review and inspection. UDOT reserves the right to withhold payment unless the Work is completed to UDOT standards and specifications. The Local Agency has the right to correct any deficiencies in a timely manner and resubmit the Work for inspection and approval.

I. Liability:

UDOT and the Local Agency are both governmental entities subject to the Governmental Immunity Act. Each party agrees to indemnify, defend and save harmless the other party from any and all damages, claims, suits, costs, attorney's fees and actions arising from or related to its actions or omissions or the acts or omissions of its officers, agents, or employees in connection with the performance and/or subject matter of this Agreement. The obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, provided said Act applies to the action or omission giving rise to the protections of this paragraph. This paragraph shall not be construed as a waiver of the protections of the Governmental Immunity Act by the parties. The indemnification in this paragraph shall survive the expiration or termination of this Agreement.

II. Termination:

This Agreement may be terminated as follows:

- a. By mutual agreement of the parties, in writing
- b. By either UDOT or the Local Agency for failure of the other party to fulfill their obligations as set forth in the provisions of

this Agreement. Reasonable allowances will be made for circumstances beyond the control of the parties. Written notice of intent to terminate is required and shall specify the reasons for termination. If a party fails to cure the breach, the other party may terminate this Agreement.

- c. By UDOT for the convenience of the State upon written notice to the Local Agency. However, UDOT will be responsible for the costs incurred for the Work before the termination of the Agreement.

III. Maintenance:

Division of jurisdiction and responsibilities of state highways shall be in accordance with Utah Code Section 72-3-109 and applicable rules.

IV. Payment and Reimbursement to Local Agency:

UDOT shall be responsible for all actual costs associated with the Work described in this Agreement up to the maximum total cost or lump sum. The Local Agency must submit the billing within 3 months of the Work completion date.

V. Change in Scope and Schedule:

If Work scope or schedule changes from the original intent of this Agreement, UDOT will notify the Local Agency prior to changes being made. If the Local Agency modifies its Project and the modification affects the Work, Local Agency will immediately notify UDOT. In the event there are changes in the scope of the Work, extra work, or changes in the planned Work covered by this Agreement, a modification to this Agreement must be approved in writing by the parties prior to the start of work on the changes or additions.

VI. Environmental Compliance

The Local Agency will assure compliance of the Project with all applicable state and federal environmental statutes, regulations, rules, and permitting requirements.

VII. Miscellaneous:

Each party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of the Agreement at the request of the other party.

The failure of either party to insist upon strict compliance of any of the terms and conditions, or failure or delay by either party to exercise any rights or remedies provided in this Agreement, or

by law, will not release either party from any obligations arising under this Agreement.

This Agreement does not create any type of agency relationship, joint venture or partnership between the parties.

Each party represents that it has the authority to enter into this Agreement.

This Agreement may be executed in counterparts by the parties.

VIII. Content Review:

Language content was reviewed and approved by the Utah AG's office on February 2, 2015.

[Cedar City]				Utah Department of Transportation Region 4			
By		Date		By		Date	
Maile Wilson, Mayor				[Clayton Wilson, West District Engineer]			
By		Date		By		Date	
Renon Savage, City Recorder				Rick Torgerson, Region Director]			
By		Date		By		Date	
Title/Signature of additional official if required				Comptrollers Office			

